

**CONDOMINIUM INFORMATION STATEMENT
EMERALD BY THE SEA CONDOMINIUM**

DATE REVISED: August 15, 2007.

**PURCHASER, READ THIS DOCUMENT FOR YOUR OWN PROTECTION.
IT CONTAINS INFORMATION REQUIRED BY STATUTE FOR ALL
TEXAS CONDOMINIUM CREATED AFTER JANUARY 1, 1994.**

NAME OF CONDOMINIUM: Emerald By The Sea Condominium

LOCATION OF CONDOMINIUM: 500 Seawall Blvd., Galveston County, Galveston, Texas

NAME OF DECLARANT: Emerald Tower Ltd., a Texas limited partnership

ADDRESS OF DECLARANT: 1601 West Webster #9, Houston, Texas 77019

EFFECTIVE DATE OF CONDOMINIUM INFORMATION STATEMENT: August 15, 2007

This Condominium Information Statement presents certain information regarding the condominium development and the Units being offered for sale by the Declarant. It consists of two parts: a narrative portion and an exhibits portion. The exhibits include legal documents that are required for the creation and operation of the Emerald By The Sea Condominium. The exhibits will control any inconsistency between the exhibits and the narrative. The Declarant representatives are prohibited from changing or attempting to interpret any of the terms and conditions of this Condominium Information Statement.

This Condominium Information Statement is not intended to be all-inclusive or to address every significant feature of the Emerald By The Sea Condominium. Because purchasing real property is an important decision, the purchaser is encouraged to review this Condominium Information Statement with an attorney and to consult other sources for information not covered by the Condominium Information Statement.

Under limited circumstances, a purchaser has a five-day period after receiving the Condominium Information Statement during which the purchaser may cancel the contract of sale and obtain full refund of any money deposited in connection with the contract. This right to cancel does not apply if the purchaser received the Condominium Information Statement before signing the contract or if the contract contains an underlined or bold-print provision acknowledging the purchaser's receipt of the Condominium Information Statement and recommending that the purchaser read the Condominium Information Statement before signing the contract. If the purchaser elects to cancel, notice of cancellation must be given pursuant to Section 82.156 of the Uniform Condominium Act (Texas Property Code, [chapter 82]).

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 CONDOMINIUM INFORMATION STATEMENT
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**EMERALD BY THE SEA CONDOMINIUM
CONDOMINIUM INFORMATION STATEMENT**

I. Names and Principal Addresses

A. *Declarant*

Emerald Tower, Ltd.
1601 West Webster #9
Houston, Texas 77019

Emerald By The Sea Condominium (“**Emerald By the Sea**” “**Emerald**”, or the “**Condominium**”)
500 Seawall Blvd., in the City of Galveston, Galveston County, Texas

II. Description of the Condominium

A. *General Description*

Emerald By The Sea will be located on Seawall Boulevard at the intersection of Broadway and University in the City of Galveston, Galveston County, Texas. Emerald will be a residential and retail building containing one hundred thirteen (113) residential condominium units (herein referred to as a “Unit” or the “Units”), including eight (8) penthouse condominium Units, plus eight (8) guest suites, a swimming pool, a parking facility shared with retail establishments and a commercial unit with approximately 10,000 square feet of space for retail use. The Units, excluding the eight (8) penthouse Units and the commercial unit, and will range in size from approximately 579 sq. ft. to 1,755 sq. ft., and the penthouse Units will range in size from 2,751 sq. ft. to 3,487 sq. ft. The parking facility will be located on floors one (1) through five (5) of the building and will be shared with retail establishments. Retail establishments will also be located on adjoining property and will share the parking facility.

Eight (8) guest suites, the swimming pool (which is currently intended to include a swim-up-bar, infinity pool, volleyball pool and wading pool), game room, kids club room, bar-grill, fitness center, theater, wine room, and lobby will be comprise the sixth floor. Condominium Units will be located on floors seven (7) through thirteen (13) and the eight (8) penthouse Units will be located on floor fourteen (14) of the building. The commercial unit will be located in the northwest corner on the first floor of the parking facility. Each Unit will have a parking space available and penthouse Units will have two (2) parking spaces available. All parking spaces will be assigned and considered limited common elements. A limited number of individual storage units will be assigned as limited common elements.

B. *Types of Units*

The condominium Units will be one story with at least ten foot (10’) ceilings and the penthouse Units will have thirteen foot (13’) ceilings with approximately fifteen (15) different floor plans for condominium Units and four (4) floor plans for the penthouse Units. All Units will have a balcony with views varying from the Gulf, harbor and beach. The building will be approximately one hundred fifty feet (150’) in height

with the exterior to be composed of glass, mosaic tile, plaster and/or concrete, or CMU. The commercial unit will be one story retail space without a balcony.

C. *Maximum Number of Units*

Emerald By The Sea, as described in the attached Declaration, will contain a maximum of one hundred thirteen (113) residential condominium Units, including eight (8) penthouse Units, plus eight (8) guests suites, and one (1) commercial unit.

III. Documents

Unless otherwise noted, copies of the following documents are attached to this statement and incorporated herein by reference.

A. *Declaration.*

The proposed Declaration of Emerald By The Sea Condominium is attached as Exhibit A.

B. *Certificate of Formation.*

The proposed Certificate of Formation of Emerald By The Sea Condominium Association, Inc. (hereinafter referred to as the "Association") are attached as Exhibit B.

C. *Bylaws.*

The proposed Bylaws of Emerald By The Sea Condominium Association, Inc. are attached as Exhibit C.

D. *Rules*

The proposed Rules of Emerald By The Sea Condominium Association, Inc. are attached as Exhibit D. These are the initial proposed rules of the Association to be adopted by the Board of Directors at the organizational meeting of the Association.

E. *Contracts*

There are no leases or contracts, other than loan documents, to be executed by the purchaser at closing. The Declarant does require the purchaser to sign an affidavit at closing. The purpose of the affidavit is to induce lenders to make mortgage loans on Units, to induce title insurance companies to issue policies with respect to the Units, and to affirm purchasers' understanding of the nature and condition of the property they are purchasing. A Purchaser's Affidavit form is attached as Exhibit E.

IV. Projected Budget

A. *Budget*

The projected budget for the estimated expenses for the first fiscal year of the Association following the date of the conveyance of the first Unit to a purchaser is attached as Exhibit F. All

budgets are based upon estimates and assumptions from variable data, historical and projected, relating to expenses, income and occupancy and are subject to change at any time.

B. Preparer

The original projected budget was prepared for the Declarant by Martie Terry and Stephen Swan of Randall Davis Company, 1210 West Clay, #10, Houston, Texas 77019. Revisions were prepared by David Regenbaum of Association Management, Inc. 9575 Katy Freeway Suite 130, Houston, Texas 77024-1453.

C. Assumptions About Occupancy

The projected budget is based on the assumption that all 113 Units are occupied for all or most of the budget year.

D. Assumptions About Inflation

All budgets are based on a 100 percent net collection rate and the estimates are in current dollars unadjusted for possible inflation.

V. Liens, Leases, or Encumbrances

Title to the Condominium after conveyance by the Declarant will be subject to the following:

A. Deed of Trust and/or other security instruments executed by each owner of a Unit as may be required by each owner's respective mortgagee.

B. The Association shall have a lien on each Unit for common expense assessments, special assessments, fines, late charges, collections costs, interest, any other amount due the Association, and attorney's fees for the collection of same.

C. The Declarant's right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the condominium property for the purpose of furnishing utility and other services to the Condominium, and parking and access easements for the benefit of the owner of adjoining property for retail parking and access.

D. The Declarant's right to grant easements to public utility companies for the purpose of furnishing utility and other services to the Condominium.

E. Taxes, including any reassessment or reallocation from the creation of the Condominium, which become due and payable after the date of conveyance of each Unit.

F. The land is currently subject to the following liens and encumbrances:

Restrictive covenants recorded under Volume 1067 Page 341 and Volume 1875 Page 728, and Volume 1875 Page 730 in the office of the County Clerk Records of Galveston County, Texas, and those filed for record under Galveston County Clerk's File No. 2007045537;

Building set back line 20 feet in width along the West property line(s) as set forth in instrument recorded in Volume 1875 Page 728 in the office of the County Clerk of Galveston County, Texas;

A 10 foot utility easement together with an aerial additional aerial easement 5 feet on each side of the ground easement beginning at a plane 20 feet in the air and extending upward, as located in abandoned 5th Street, as set forth by instrument recorded in Volume 2335 Page 296 in the office of the County Clerk of Galveston County, Texas;

Right of Way and easement 10 feet in width granted to the United States of America as set forth and more fully described in instrument recorded in Volume 665 Page 94 in the office of the County Clerk of Galveston County, Texas;

Terms conditions and stipulations contained in that certain agreement recorded in Volume 899 Page 658 in the office of the County Clerk of Galveston County, Texas;

Easements affecting common areas for public utilities, drainage, etc., as shown by the recorded plat of said condominium and by instrument recorded under Galveston County Clerk's File No. 2007045537;

All oil, gas, and other minerals, the royalties, bonuses, rentals and all other rights in connection with same as set forth in instrument recorded under Clerk's File Number 2005017313 of the Official Records of Galveston County, Texas;

Any and all public or private utilities contained within the abandoned alley, as set forth by instrument recorded under Galveston County Clerk's File No. 2004083013;

Easement and Memorandum of Agreement by and between Emerald Tower, Ltd. and Texas & Kansas City Cable Partners, L.P. d/b/a Time Warner Cable, for the installation, operation and maintenance of a Cable Television System as reflected by instrument filed for record under Galveston County Clerk's File No. 2006077498;

Parking and Access Easement as set forth by instrument filed for record under Galveston County Clerk's File No. 2007039538.

All liens and encumbrances appearing on title commitments for individual condominium units.

VI. Written Warranty

The proposed Limited Warranty to be provided by the Declarant is attached as Exhibit G.

VII. Unsatisfied Judgments or Pending Lawsuits

Declarant does not have actual knowledge of any unsatisfied judgments against the Association or of any pending suits to which the Association is a party or which are material to the land title and construction of the Condominium.

VIII. Insurance Coverage Provided for the Benefit of Unit Owners

In accordance with Section 82.153(a) (10) of the Uniform Condominium Act (Texas Property Code, Chapter 82), the following is a statement of the insurance coverage to be provided for the benefit of Unit Owners. Additionally, there are some suggestions which you may wish to take into consideration when purchasing a Unit.

The Declarant, for the benefit of the Association, will obtain a master insurance policy from an insurance carrier acceptable to the Federal National Mortgage Association. The effective date of the coverage will be upon execution of the Declaration and will expire at the end of the calendar year after its effective date. The following information was provided by Brian Rhames Insurance Company, who may be reached at (713) 627-8711.

A. Property Exposure to Loss

The policy is written on a "blanket" Broad Form Covered Causes of Loss basis with "agreed amount" and "full insurable replacement cost" coverage's less the applicable deductible. Total coverage for the building will be equal to no less than eighty percent (80%) of its insurable replacement value of approximately up to \$32,000,000.00. The following is an explanation of these terms in the policy:

1. *Blanket Broad Form Covered Loss.*

The total amount of insurance could apply to your building or all buildings the Association is responsible to insure, covering both the Common Elements *and* your Unit, including the party walls, fixtures and installations initially installed by the Declarant and their replacements, as well as improvements and betterments made or acquired at a Unit Owner's expense.

In short, the Property coverage on the master policy covers the Property that was originally purchased from the Declarant (e.g. exterior walls, roofs, interior walls, partitions, ceilings, floors, rugs, etc.) including custom and special extras installed at an owner's expense.

2. *Agreed Amount.*

There is no coinsurance (an obligation to contribute for any loss if you are underinsured) in the event of loss. There is an estimated \$5,000.00 deductible per occurrence.

3. *Full Insurable Replacement Cost.*

The building will be insured up to no less than eighty percent (80%) for its insurable cost up to a maximum of \$32,000,000.00.

4. *Replacement Cost.*

Losses are adjusted without depreciation, except for carpeting which is insured at its depreciated value, provided the buildings are repaired or replaced to their original condition.

5. *Broad Form Covered Causes of Loss.*

The master policy covers normal risks of loss formerly considered "all risk", coverage, with some common exclusion as listed below:

- a. Personal property of an individual owner.
- b. Damage caused by earthquake and flood.
- c. Damages caused by wind.
- d. Other common exclusions in such policies.

In addition to the hazard coverage's listed above, the master policy provides the following coverage for the Association:

Liability Exposure to Loss.

1. *Commercial General Liability.*

- a. Bodily Injury and Property Damage Liability: \$1,000,000.00 per occurrence with not less than a \$5,000,000.00 umbrella policy, with a \$10,000,000.00 annual aggregate.
- b. Personal Injury Liability & Advertising Injury Liability.
- c. Fire Damage Legal Liability: \$900,000.00 per occurrence.
- d. Medical Payment: \$5,000.00 per person.
- e. Non-owned Auto: \$1,000,000.00 combined single limit.

2. Wind damage of approximately \$3,200,000.00 from the Texas Windstorm Insurance Association.

We are not providing liability coverage for accidents or occurrences that occur within that portion of the premises which is reserved for an owner's exclusive use and occupancy.

2. *Directors and Officers Liability.* \$1,000,000.00 with a minimum deductible per occurrence.

3. *Fidelity Coverage Approximately.* \$50,000.00 Employee Dishonesty.

4. *Income Exposure to Loss.*
 - a. Assessment Fees Receivable Insurance. Lost assessments because of a covered loss to the Property.
5. *Personnel Exposure to Loss.*
 - a. Workers Compensation Employers Liability Insurance.
6. *Additional Areas Not Covered.* Because of the exclusions in the master policy, you should consult with your own agent about purchasing a policy to cover the following exposures:
 - a. Value of household and personal property.
 - b. Additional living expense.
 - c. Personal injury.
 - d. Loss assessment coverage.
 - e. Value of jewelry, furs, silverware, fine art.
 - f. Business interruptions.
 - g. Value of betterments and improvements made or acquired at the expense of an individual Unit Owner.
 - h. improvements or betterments that are not covered by the master policy.

Should a situation occur where you would like to present a claim under the master policy, or if you have any questions regarding your insurance coverage, please feel free to contact us.

IX. Fees or Charges for Use of Common Elements

The Association's Board of Directors has the authority to impose charges for the use or rental, of the Common Elements and other facilities related to the Condominium, in accordance with Section 6.2 of the Declaration. The Association's Board of Directors does not anticipate the imposition of any charges for the use or rental of the Common Elements.

X. General Information

The exhibits which follow this narrative portion provide a more detailed description of the Condominium and the rights and obligations of the Unit owner. The purchaser should carefully consider the exhibits, as well as this narrative portion of the Condominium Information Statement. If the purchaser does not understand any aspect of this Condominium Information Statement, the sales contract, and any other materials provided in connection with the sale of Units, the purchaser should obtain competent legal counsel.

The Declarant reserves the right to amend, in writing, the terms of this Condominium

Information Statement. If the change may adversely affect a purchaser under contract who has received a Condominium Information Statement but who has not yet closed, the Declarant shall furnish a copy of the amendment to that purchaser before closing. This Condominium Information Statement may not be changed or modified orally.

Dated: ___/___/2007

EMERALD TOWER, LTD., a Texas limited partnership
By: SUNHILL INTERNATIONAL CORPORATION,
its general partner

By: _____
Namir Faidi, President

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**DECLARATION OF CONDOMINIUM FOR
EMERALD BY THE SEA CONDOMINIUM**

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

ARTICLE 1. SUBMISSION: DEFINED TERMS

Section 1.1 Submission of Real Estate

Emerald Tower, Ltd., a Texas limited partnership, owner in fee of the real property described in Section 3.1 (hereinafter the "Property"), hereby submits the Property, together with all easements, rights and appurtenances thereto and the building and improvements erected or to be erected thereon, to the provisions of the Texas Uniform Condominium Act (Texas Property Code, Chapter 82) and does hereby adopt, establish, and promulgate this Declaration of Condominium for Emerald By The Sea Condominium, hereinafter referred to as the "Declaration", upon such Property.

Declarant desires to subject the Property, together with additional land as may hereinafter be made subject hereto, to the assessments, conditions, covenants, easements, reservations, and restrictions hereinafter set forth, for the benefit of the Property, additions thereto, and each Owner of any part thereof.

Declarant hereby declares that the Property shall be developed, improved, sold, used and enjoyed in accordance with, and subject to the Texas Uniform Condominium Act, and the assessments, conditions, covenants, easements, reservations, and restrictions hereinafter set forth, all of which are hereby adopted for, and placed upon said Property and shall run with the Property and be binding on all parties, now and at anytime hereinafter, having or claiming any right, title or interest in the Property or any part thereof, their heirs, executors, administrators, successors and assigns, regardless of the source of, or the manner in which any such right, title or interest is or may be acquired, and shall inure to the benefit of each Owner of any part of the Property.

Section 1.2 Defined Terms

As used in this Declaration, the following terms have the meanings specified in this Section 1.2. Other capitalized terms not defined herein or in the Plats and Plans shall have the meaning specified or used in the Act.

“Act” means the Uniform Condominium Act (Texas Property Code, Chapter 82), as amended from time to time.

“Allocated Interests”: means the undivided interest in the Common Elements allocated to each Unit as set forth on Exhibit “B” attached hereto and made a part hereof for all purposes. The Allocated Interest of each Unit was established by dividing the number of square feet in such Unit by the total number of square feet of all Units in the Condominium.

“Appointed Board”: means the initial Board of Directors who shall be appointed by the Declarant. The Declarant shall have the right to appoint all or some of the Directors as set out in Article VIII Section 8.3. From and after the termination of the Declarant Control Period (as defined in Article VIII Section 8.3), the then-current Board shall serve until an election can be conducted to elect the Fully Elected Board, pursuant to the Bylaws.

“Association” means the Emerald By The Sea Condominium Association, a Texas nonprofit corporation and condominium association, its successors, assigns or replacements. The Association has been or will be incorporated under the laws of the State of Texas, to which shall be delegated and assigned the power of administering and enforcing the assessments, conditions, covenants, easements, reservations and restrictions set out in this Declaration, including levying, collecting and disbursing the assessments. The Association’s directors will establish By-Laws by which said Association shall be governed through its Board of Directors, for the purpose of exercising the functions aforesaid. No more than one such non-profit corporation shall be in existence at any one time. The members of the Association shall be the Owners of Units during the period of their respective ownerships, and the successors and assigns of such Owners.

“Balcony” or “Balconies” means the Limited Common Element attached to and allocated exclusively to a Unit, that is designated “Balcony” on Exhibit “C” attached hereto and made a part hereof for all purposes.

“Board of Directors, or Board” means the Board of Directors of the Association whether such Board be appointed by the Declarant or elected by the members of the Association in accordance with the provisions of this Declaration and the Bylaws, or the body, regardless of name, designated to act on behalf of the Association.

“By-Laws”: means the By-Laws of the Association, as they may be amended from time to time.

“Common Area(s) or Common Element(s)” means the Common Elements that shall be and include all of the Property and buildings except the Units and shall include both general and Limited Common Elements and exclusive use Limited Common Elements, without limiting the generality of the foregoing, all improvements located or to be located on the Property; water meters and/or electrical meters, if any, parking spaces, foundations, supporting columns; girders, beams, slabs, supports, load-bearing walls, exterior glass walls, dividing walls between one or

more Units or between such Unit and Common Elements, roofs, walkways, stairs, stairways, fire escapes, entrances and exits of the buildings; grounds, gardens, the parking lot and all approaches, entrances and exits thereon and therefrom; managerial and other offices, mailrooms, areas used for storage of janitorial supplies, maintenance equipment and materials, cable television lines, converters, conduit and facilities, electrical lines and cables up to and including the point of entry into the breaker boxes of a Unit, plumbing fixtures, pipes and lines installed in the walls of the buildings or of a Unit that do not exclusively service such Unit, installation of all central services that do not exclusively service a particular Unit, including power, light, water, water lines, heating, air conditioning (including "air handlers" and fan coil units not located within a Unit), water collection facilities, tanks, pumps, motors, fans, compressors, ducts, driveways, and in general all apparatus and installations existing for the common use or necessary or convenient to the operation, maintenance and use of the Property, the buildings and all other improvements located or to be located on the Property as a condominium building including the Common Areas; and all repairs and replacements of or additions to any of the foregoing. The hallways, stairs, gardens, and those portions of the Property and other Common Elements intended to be used for passages or temporary occupancy by persons are sometimes referred to herein as "Common Areas."

"Common Expense Charge" means the annual assessment made and levied by the Board against each Owner and its Unit for administration, management and operation of the Condominium and the Condominium Regime and for repairs, maintenance, insurance, additions, alterations, reconstruction and operation of all or any portion of the Common Elements (including reserves for replacements) and other expenses provided by the terms of this Declaration to be paid by the Association, in accordance with the provisions hereof.

"Common Expense Fund" means the accumulated Common Expense Charges and other amounts collected or received by the Association.

"Commercial Unit" means the commercial condominium Unit located on the first (1st) floor for retail use as same is shown on Exhibit C.

"Condominium" means the Emerald By The Sea Condominium which shall be a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the Owners of those portions. The Property, buildings and all other improvements located or to be located on the Property and all other rights appurtenant to the Property, the buildings and all other improvements located or to be located on the Property. The components of the Condominium are further herein classified as "Common Elements," "Limited Common Elements," and "Units" as defined herein.

"Condominium Regime": means the legal rights and duties of ownership, maintenance, and administration created by the terms of the Texas Uniform Condominium Act and all amendments

thereto (to the extent that such amendments are applicable in this Declaration and the Condominium), this Declaration of Condominium, and the By-Laws and Rules and Regulations promulgated thereunder.

"Declarant" means Emerald Tower, Ltd., a Texas limited partnership, or its successors or assigns, provided such successors or assigns are designated in writing by Emerald Tower, Ltd., as a successor or assign of the rights of Declarant set forth herein.

"Eligible Insurer" means an insurer or guarantor of a first mortgage secured by a Unit in the Condominium. An Eligible Insurer must notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a first security interest in a Unit. It must provide the Association with the Unit number and address of the Unit on which it is the insurer or guarantor of a security interest. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article XVI.

"Eligible Mortgagee" means a holder of a first mortgage secured by a Unit in the Condominium. An Eligible Mortgagee must notify the Association in writing of its name and address and inform the Association that it holds a first security interest in a Unit. It must provide the Association with the Unit number and address of the Unit on which it holds a security interest. Such notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XVI.

"Family" shall mean a single nuclear family. For purposes of this Declaration, a single nuclear family shall be defined as any number of persons related within the first degree of consanguinity or affinity, living with not more than one (1) person who is not so related as a single household unit and one household employee of such household unit. It is not the intent of the Declarant to exclude from a Unit any individual who is authorized to so remain by any local, state or federal law. If it is found that this definition, or any other provision contained in this Declaration is in violation of any applicable law, then this term shall be interpreted to be as restrictive as possible to preserve as much of the original intent of the Declarant as allowed by law.

"Fully Elected Board" means the Board of Directors who shall be elected by the Members upon termination of the Declarant Control Period. Such election is to be held as set out hereinbelow and the Bylaws.

"Guest Suites" means the eight (8) Units located on the sixth (6) floor of the Condominium, which shall be available for rental by Owners for housing their guests, under the terms and conditions of a rental agreement by and between the requesting Owner and the Owner of the Guest Suites, and as further set out in Section 11.3 herein.

"Governing Documents" means the Declaration, Plats and Plans recorded and filed pursuant to the provisions of the Act, the Certificate of Formation of the Association, the Bylaws of the

Association, and the Rules of the Association as they may be amended from time to time. Any exhibit, schedule or certification accompanying a Governing Document is a part of that Governing Document.

"Limited Common Element" means a portion of the Common Elements, designated in this Declaration, or on the Plats and Plans, by the Act, for the exclusive use of one or more but fewer than all of the Units. When used herein the term "Common Elements" includes the Limited Common Elements unless otherwise expressly indicated.

"Member" means an Owner, as defined in this article, pursuant to this Declaration.

"Owner" means any person or persons, firm, corporation or other entity that owns, of record, a Unit, or legal interest therein, including the Declarant, but the term "Owner" as in a particular Unit shall not include any Mortgagee of that Unit.

"Private Garages" means the limited number of parking garages available for parking of vehicles as shown on the attached Exhibit "C". The Private Garages will be conveyed on a first-come, first-serve basis and shall be conveyed with a corresponding residential Unit. An Owner may not own a Private Garage without also holding title to a residential Unit. Upon conveyance of a residential Unit by an Owner who also purchased a Private Garage, the Private Garage must also be conveyed with the residential Unit. Private Garages shall not be available for purchase by the Owners of the Commercial Unit or the Guest Suites.

"Property" means the real property described in Article III, together with all easements, rights and appurtenances thereto and the buildings and improvements erected or to be erected thereon, submitted to the provisions of the Act.

"Rules and Regulations": means the Rules and Regulations which may be adopted by the Board concerning the management and administration of the Condominium and the use of the Common Elements (including the Limited Common Elements) and the enforcement of the terms and provisions of this Declaration and the Rules and Regulations governing the Condominium in order to assure to all Owners the benefits of ownership of a Unit and use of the Common Elements. The initial Rules and Regulations may be promulgated and amended by the Declarant.

"Unit" or "Units" means those condominium units and their respective Private Garage (if any is purchased), together with its respective assigned parking space and storage space (if any), created pursuant to this Declaration each of which is assigned an Allocated Interest as shown on Exhibit "B. The Units shall mean the physical portion of the Condominium designated for separate fee simple ownership or occupancy, the boundaries of which are described in this Declaration as the condominium units located in the building as shown on Exhibit "C" attached hereto, the boundaries of which shall be the interior surfaces of the perimeter walls, floors, ceilings, windows and window frames, doors and door frames that provide access to and egress

from Common Areas and the exterior surfaces of Balcony or Balconies, the interior surfaces of the perimeter walls, floors, ceilings, doors and door frames, which shall include the portions of the Buildings and the air space within such boundaries as shown on said Exhibit "C" excepting Common Elements. Included as a part of each Unit shall be the interior surfaces of the perimeter walls, floors, ceilings, doors and door frames of the Private Garage, if any is purchased by that particular Unit. Additionally included within the boundaries of each Unit, without limitation, shall be any finishing materials applied or affixed to the interior surfaces of the interior walls, floors or ceilings (such as, but without limitation, paint, wallpaper, wall or floor coverings and carpets) non-load-bearing interior walls and doors separating rooms within a Unit and all utility pipes, lines, systems, fixtures and appliances servicing only that Unit including, without limitation, hot water heaters, water pipes, air handlers, fan coil units and all visible and exposed plumbing fixtures, lines and pipes whether or not within the boundaries of a Unit. It is expressly stipulated, and each and every purchaser of a Unit, its heirs, executors, administrators, assigns, successors and grantees hereby agree, that the square footage area and dimensions of each Unit, and Balcony if applicable, as set out and shown in this Declaration or in the plats attached as exhibits hereto, are approximate and are shown for descriptive purposes only, and that the Declarant does not warrant, represent or guarantee that any Unit actually contains the area, square footage or dimensions shown by the plats attached hereto. Each purchaser and Owner of a Unit or interest therein has had full opportunity and is under a duty to inspect and examine the Unit purchased by it prior to the purchase thereof (if constructed prior to purchase), and agrees that the Unit is purchased as actually and physically existing and/or planned. Each purchaser of a Unit hereby expressly waives any claim or demand which it may have against the Declarant on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and/or planned, and as it is shown on the plats attached hereto.

ARTICLE II. NAMES

Section 2.1 Condominium

The name of the Condominium is Emerald By The Sea Condominium.

Section 2.2 Association

The name of the Association is Emerald By The Sea Condominium Association, Inc., a Texas nonprofit corporation.

ARTICLE III. DESCRIPTION OF REAL PROPERTY

The Condominium is located in Galveston County, Texas. The real property of the Condominium is described in the legal description on Exhibit "A" hereto.

ARTICLE IV. THE ASSOCIATION

Section 4.1 Authority

The business and affairs of the Condominium shall be managed by the Association acting by and through its Board of Directors. The Association shall be governed by its Bylaws, this Declaration, the Association's, Certificate of Formation, and the Condominium Act as amended from time to time.

Section 4.2 Powers

The Association shall have all of the powers provided in the Act and the Governing Documents.

ARTICLE V. UNITS

Section 5.1 Number

The number of Units in the Condominium is one hundred thirteen (113), including eight (8) Penthouse Units, plus eight (8) Guest Suites, and plus one (1) Commercial Unit for retail use.

Section 5.2 Identification

The identification number of each Unit is shown on the Plats or Plans or both.

Section 5.3 Unit Owner Interest

Each Unit Owner shall own title in fee simple to his or her Unit and an undivided interest in the Common Elements, the common expense liability, and votes in the Association as herein allocated to each Unit, and shall have the exclusive right to the use and occupancy of his or her Unit, subject to the provisions of the Act and the Governing Documents.

Section 5.4 Boundaries

The boundaries of each Unit are shown on the Plats and Plans and are more particularly described as the interior finished surfaces of the perimeter walls, floors, ceilings, and balcony of a Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces are a part of the Unit, and all other portions of the perimeter walls, floors, ceilings or balcony are a part of the Common Elements. Subject to Section 6.1(b), the spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

ARTICLE VI. COMMON ELEMENTS

Section 6.1 Limited Common Elements

The following portions of the building are designated as Limited Common Elements:

(a) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of a Unit, then the portion serving only that Unit is a Limited Common Element allocated solely to that Unit, and the portion serving more than one Unit or the Common Elements is a part of the General Common Elements.

(b) Any shutters, awnings, window boxes, doorsteps, stoops, porches, patios, and exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

(c) Stairways, the use of which is limited to certain Units as shown on the Plans are Limited Common Elements allocated exclusively to those Units.

(d) A portion of the parking spaces shall be assigned as Limited Common Elements for the exclusive use of the Unit Owner of the Unit to which they are assigned of record. Additional parking spaces may be designated by Declarant by easement or use agreements for the use of retail establishments, their customers and invitees and/or Unit Owners, visitors, guests, invitees, and tenants.

(e) The area improved by the Declarant as storage facilities for Units shall be a Limited Common Element, the use of which is limited exclusively to the Owner of the Unit to which the storage space has been assigned.

(f) Any Common Expenses associated with the maintenance, repair, or replacement of the Common Elements, components or elements attached to exterior surfaces, trim, siding, doors, windows, storage area, and elevators shall be assessed against the Unit or Units to which the Limited Common Element is assigned as a Common Expense assessment. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

Section 6.2 Allocation of Specified Common Elements

The Board of Directors may designate parts of the Common Elements from time to time for use by less than all of the Unit Owners, or by non-owners for specified periods of time, or by only those persons paying fees or satisfying other reasonable conditions for use as may be

established by the Board of Directors. Any such designation by the Board of Directors shall not be a sale or disposition of such portions of the Common Elements.

Section 6.3 Transfer of Common Elements

Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) by an individual of any interest in the Common Elements will be void unless the Unit to which that interest is allocated is also transferred.

Section 6.4 Reassignment of Limited Common Elements

A Limited Common Element may be reassigned upon the written application to the Association by the Owner(s) whose use of the Limited Common Element is or may be directly affected by the reassignment. Upon such application the Association shall prepare and execute an amendment to this Declaration reassigning the Limited Common Element. This amendment shall be delivered to the Owners of the Units affected by the reassignment upon payment by them of all costs for the preparation, execution and recordation of the amendment. The amendment shall become effective upon the execution of the amendment by the Association and the Owner(s) directly affected by such reassignment and the recordation of such amendment in the Galveston County Real Property Records. A Limited Common Element may only be assigned to a Unit Owner.

ARTICLE VII. MAINTENANCE, REPAIR, AND REPLACEMENT

Section 7.1 Common Elements

The Common Elements shall be maintained in good condition by the Association, subject to reasonable wear and tear and casualty. The Declarant, general contractor, suppliers, or manufacturers may provide information to the Association regarding the use and maintenance of Common Elements. Subject to Section 17.2, the costs and expense for the upkeep and maintenance of the Common Elements shall be a Common Expense of the Unit Owners, and shall be included in the Common Expense Assessments for the usual and ordinary costs and expenses for the maintenance, repair, upkeep and operation of the Common Elements, and each Owner shall pay his or her pro-rata share thereof. The failure to use and maintain the Common Elements as intended and in accordance with any instructions or information from manufacturers, suppliers, the general contractor or the Declarant shall void any warranties and the Association shall indemnify the Declarant, together with its respective representatives, from any and all claims, demands, damages, losses and expenses, including, without limitation, reasonable attorney's fees, resulting directly or indirectly therefrom.

Section 7.2 Units

Each Unit Owner shall maintain, repair, and replace, at his or her own expense, all portions of his or her Unit, except those portions of the Unit required by the Declaration or the Act to be maintained, repaired, or replaced by the Association.

Section 7.3 Right of Access

The Board, or its duly authorized representative (including any then acting managing agent), shall have the right and authority to enter any Unit for the purposes of:

- (a) Making necessary repairs to Common Elements;
- (b) Performing necessary maintenance to the Common Elements (including, without limitation, cable television facilities), for which the Association is responsible;
- (c) Abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in such Unit or any appurtenance thereto (including, without limitation, removal of objects placed upon or stored on any Balcony or patio without the prior written approval of the Board);
- (d) Protecting the property rights and welfare of other Owners;
- (e) Enforcing the provisions of this Declaration, the By-Laws or the Rules and Regulations promulgated thereunder, and;
- (f) Gaining access to any Balcony or patio for any of the purposes set forth in hereinabove, and to permit authorized personnel to maintain, repair and/or replace the walls of the Buildings and to store temporarily on any Balcony or patio such equipment as is reasonably necessary to accomplish the purposes set forth in this Section.

Except in the event of an emergency or, as to Balconies, when the periodic cleaning and maintenance of the perimeter walls of the buildings have been scheduled, such right of entry shall be exercised only in the presence of the Owner or other occupant, or the express approval of the Owner or other occupant, of the Unit that is entered and in the presence of the managing agent or its agent. The Association shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such right of entry, nor in any way shall the Association or its agent be liable for any accounting or other claim for such action. Such right of entry shall be exercised in such manner as to avoid any unreasonable or unnecessary interference with the possession, use or enjoyment of the Unit by the Owner or occupant thereof and shall, whenever possible, be preceded by a notice to the Owner or occupant thereof. The rights of entry herein granted to the Association or its duly authorized representative may be

accomplished by and exercised subject to such methods and procedures as may be set forth in Rules and Regulations.

ARTICLE VIII. SPECIAL DECLARANT RIGHTS, AND THE DECLARANT CONTROL PERIOD

Section 8.1 Special Declarant Rights

The Declarant reserves the following special declarant rights:

- (a) to complete or make improvements indicated on the Plats and Plans filed with this Declaration;
- (b) to maintain sales, management, or leasing offices, and models in Units or on the Common Elements for as long as the Declarant owns a Unit, subject to the following limitations:
 - (i) no more than four Units owned by the Declarant may be used at any one time as sales, management or leasing offices, or models;
 - (ii) offices and models may be located on any floor of the Condominium and may consist of multiple Units with the same floor plan or any combination of floor plans; and
 - (iii) offices and models may be relocated at any time provided the Declarant takes reasonable steps to minimize any disruption to the Unit Owners caused by such relocation;
- (c) to maintain signs on the Condominium to advertise the Condominium until the Declarant owns and is marketing three (3) or less Units for sale;
- (d) to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration; and
- (e) to appoint or remove any officer of the Association or any director during the period of Declarant control, subject to the provisions of Section 8.3 of this Declaration.

Section 8.2 Limitations on Special Declarant Rights

Unless sooner terminated by a recorded instrument signed by the Declarant, any Special Declarant Right may be exercised by the Declarant for the period of time specified in the Act.

Section 8.3 Declarant Control of the Association

The Declarant Control Period is the period during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board. The Declarant shall retain the unilateral right to appoint all Directors until not later than the 120th day after conveyance of 50 percent (50%) of the Units to Unit Owners other than a declarant at which time not less than one-third (1/3) of the members of the Board must be elected by Unit Owners other than the Declarant.

The Declarant Control Period shall terminate not later than the 120th day after conveyance of 75 percent (75%) of the Units to Unit Owners other than a declarant, at which time the Owners shall elect a Board of at least three (3) members pursuant to the provisions in the Bylaws. The persons elected shall take office upon election.

Notwithstanding anything contained herein to the contrary, the Declarant has the right, at any time to transfer all or a portion of its Declarant rights created in this Declaration, so long as such transfer be in writing and recorded in the real property records of Galveston County, Texas. The termination of the Declarant Control Period to appoint and remove the officers and members of the Board, shall in no way effect any other rights of the Declarant created in this Declaration.

ARTICLE IX. ALLOCATED INTERESTS, VOTING RIGHTS

The undivided interest in the Common Elements, the Common Expense liability, and votes in the Association are allocated to each Unit as set forth on Exhibit "B" attached hereto and made a part hereof for all purposes. The Allocated Interest of each Unit was established by dividing the number of square feet in such Unit by the total number of square feet of all Units in the building.

Each Owner's voting rights shall be based on the number of Units owned and shall be as set out on the attached Exhibit B. As shown on Exhibit B, each residential Unit shall be entitled to one (1) vote, each Penthouse Unit shall be entitled to one and one-half (1.50) votes, each Guest Suite shall be entitled to three-fourths (.75) of a vote, and the Commercial Unit shall be entitled to one (1) vote. Members shall exercise their votes as set out in the By-Laws.

ARTICLE X. SITE PLANS OR FLOOR PLANS

A project plat and Unit plans (floor, elevation, and individual condominium Unit plans) are attached to this Declaration as Exhibit "C".

ARTICLE XI. RESTRICTIONS ON USE, OCCUPANCY, AND ALIENATION

Section 11.1 Use Restrictions

Subject to the special declarant rights reserved under Article VIII, the following use restrictions apply to all Units and to the Common Elements:

(a) With the exception of the Commercial Unit which may be used for commercial purposes only as set out below in Section 11.4, the use of each Unit is restricted to that of a single family residence and accessory uses as permitted herein. Except for those activities conducted as part of the marketing and development program of the Declarant, no industry, business, trade or commercial activities (other than home professional pursuits), unscheduled public visits, nonresidential storage, mail or other use of a Unit shall be conducted, maintained or permitted in any part of a Unit, nor shall any Unit be used or rented for transient, hotel or motel purposes, except for leasing and renting as provided in this Declaration, the Rules and Regulations and/or Bylaws of the Association.

(b) No improper, offensive or unlawful use may be made of the Property; Unit Owners shall comply with and conform to all applicable laws and regulations of the United States and the State of Texas and all ordinances, rules and regulations of the City of Galveston, and Galveston County, Texas. The violating Unit Owner shall hold harmless the Association and other Unit Owners from all fines, penalties, costs and prosecutions for any violation or noncompliance.

Section 11.2 Occupancy Restrictions

Subject to the special declarant rights reserved under Article VIII, the following occupancy restrictions apply to all Units and to the Common Elements.

(a) No Unit Owner shall do any act or permit any act to be done in, on or to any Unit, balcony, patio, yard, parking space, or Common Element which will impair the structural integrity, weaken the support or otherwise adversely affect the building or any Common Element.

(b) No electrical device creating overloading of standard circuits may be used without permission from the Board of Directors. Misuse or abuse of appliances or fixtures within a Unit which affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Unit Owner who caused it. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

(c) All Unit Owners shall maintain their Units in a clean and well maintained condition. No storage of trash will be permitted in or outside any Unit in a manner which may permit the spread of fire, odors, or seepage or the encouragement or vermin.

(d) All fixtures and equipment will be used for the purpose for which they were designed. There shall be no floor load in excess of 50 pounds per square foot, unless special arrangements are made and an engineering determination of floor load capacity in the area of the heavy use is approved by the Association.

(e) A parking space(s) is restricted to occupancy by the owner of the Unit to which the parking space(s) is assigned as a Limited Common Element only for parking of operable automobiles, motorcycles, and bicycles, and shall not be used for storage or the parking or storage of recreational vehicles, boats or trailers. For the purposes of this Section, an operable vehicle is one that meets the restrictions of this Declaration and is at all times is operable, has current license tags, state inspection stickers, and complies with current mandatory insurance under the laws of the State of Texas. Any vehicle not in daily use as a motor vehicle on the streets and highways of the State of Texas and not in compliance with the foregoing shall be considered stored on the property and such storage is strictly prohibited.

(f) Storage of articles of personal property is restricted to assigned storage areas or the Unit Owner's Unit. Storage of personal property on Balconies, patios or other areas visible from the building's exterior is prohibited. Placement of any articles of personal property, including, furniture and related amenities in such areas shall be restricted to that of the quality, design and appearance compatible with the design and standards of the Condominium project. Any quality issues, questions or variances shall be subject to the approval of the Board of Directors.

(g) No noxious, offensive, dangerous or unsafe activity shall be conducted in any Unit, nor shall anything be done, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants. No Unit Owner or occupant shall make or permit any disturbing noises nor do or permit anything to be done by others that will interfere with the rights, comforts or convenience of other Unit Owners or occupants. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for residential monitoring purposes, shall be installed or operated on the Property, unless required by federal, state or local regulation.

(h) No animals, birds, or reptiles of any kind shall be kept in a Unit, except for a maximum of two dogs of gentle disposition, or two cats, caged birds, aquarium fish, or other household pets ("Pets"), as approved in writing by the Board of Directors as compatible with the Condominium. All dogs shall, at all times, be on a leash which must be held by a responsible person, or in a carrier when outside of a Unit and shall not be left unattended at any time while outside of a Unit and shall not be left unattended for more than two (2) hours per day on any balcony or exterior enclosure of a Unit. Owners shall comply at all times with the rules and

regulations promulgated by the Association pertaining to ownership and maintenance of Pets. Pets may not be kept, boarded, or maintained for any commercial purpose. Any Pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon three (3) days' written notice from the Board of Directors. Unit Owner shall hold the Association harmless from any claim resulting from any action of their pets. Service animals will be permitted for those persons holding certificates of necessity.

(i) All clothes dryers will have lint filters which will remain installed and prevent lint from accumulating in the vent duct. All stove hoods will have grease screens which will remain installed and prevent grease from accumulating in the vent duct. All such filters and screens will at all times be used and kept clean in good order and repair by the Unit Owner.

(j) No signs, window displays or advertising visible from outside a Unit (except for a name plate or sign not exceeding nine square inches in area, on the main entrance door to each Unit and which is approved by the Board of Directors) shall be maintained or permitted in any part of a Unit. Signs or stickers provided to an Owner by a commercial security or alarm company providing service to the Unit shall be permitted so long as the sign is not more than 8" x 8" or the sticker is no more than 4" x 4". There shall be no more than one sign and no more than six (6) stickers located on the windows or doors. Stickers shall also be permitted upon windows and doors for a "Child Find" program or a similar program sponsored by a local police and/or local fire department.

(k) No Owner shall erect antennae, awnings or other exterior attachments, or place any reflective material in the windows of a Unit or on the Balcony thereof, including the placement or installation of any equipment or materials on the roof of the Building.

(l) All window coverings visible from any portion of the exterior of the Condominium and/or a Unit, including, without limitation, drapes, shades, shutters, and/or backings, shall be of design and materials consistent with the quality, standards and design of the Condominium and shall be white or off white in color. Any quality issues, questions or variances shall be subject to the approval of the Board of Directors. Any window treatment or covering visible from the exterior of the Unit shall be subject to Rules and Regulations, and/or Guidelines, if any. Expressly prohibited both before and after the initial three (3) months of occupancy are any temporary or disposable coverings not consistent with the aesthetics of the Condominium, such as reflective materials, newspapers, shower curtains, fabric not sewn into finished curtains or draperies, other paper, plastic, cardboard, or other materials not expressly made for or commonly used by the general public for window coverings in a condominium of the same caliber as the Condominium.

(m) No Owner shall install, attach or hang or allow to be installed, attached or hung any equipment or wiring or electrical installations, television or radio transmitting or receiving antennas, air conditioning units or any other equipment, item, or wiring on, in or across any portion of any Common Element, patio, or Balcony railing or other portion of a Balcony that is a

Common Element, or through any wall, floor, ceiling, window or door that is a Common Element, except as approved by the Association. All radios, television, electrical equipment or appliances of any kind or nature and the wiring thereof installed or used in a Unit shall fully comply with all rules, regulations or requirements of all state and local public authorities having jurisdiction. The Declarant by promulgating this Section is not attempting to violate the Telecommunications Act of 1996, as same may be amended from time to time. This Section shall be interpreted to be as restrictive as possible while not violating said act.

Section 11.3 Leasing Restrictions

All leases and rental agreements shall be in writing and subject to the requirements of the Declaration, the Certificate of Formation, Bylaws and Rules and Regulations of the Association with a copy provided to the Association. All leases of a Unit shall include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Governing Documents against the tenant, provided the Association gives the landlord written notice to the last known address of landlord, of its intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action. The eight (8) Guest Suites on floor six (6) may be rented on a daily, weekly, monthly, or yearly basis. Units located on floors seven (7) through twelve (12) may be rented on a weekly, monthly, or yearly basis. Units on floor thirteen (13) and Penthouse Units on floor fourteen (14) may be rented for a minimum of one (1) year. The Commercial Unit may be rented for a minimum of one (1) month.

Section 11.4 Commercial Unit Prohibited Uses

Without limiting the generality of the foregoing, except as otherwise specifically provided in this Section 11.4, no part of the Commercial Unit may be used for any of the following purposes:

- (a) cinema/movie theater or other performing arts venue;
- (b) bowling alley;
- (c) skating rink;
- (d) video game room, amusement gallery, shooting gallery, carnival, or amusement arcade;
- (e) pool hall;
- (f) massage parlor, except for day spas that are approved by the Board of Directors;
- (g) facility that hosts nude, semi-nude or other erotic performances;
- (h) establishment where sexually explicit, obscene, pornographic or "adult" materials or paraphernalia, including, but not limited to, movies, videotapes, DVDs, devices, novelties, books, magazines, or other related items are sold or displayed;

- (i) "head shops" or other facilities used for the sale, display or advertisement of any paraphernalia used in the preparation or consumption of controlled substances;
- (j) facilities used for the operation of any liquor store, package store, or other store primarily selling and/or manufacturing alcoholic beverages (except this restriction shall not apply to stores primarily selling wine);
- (k) bar or other establishment serving alcohol for consumption on the premises (except this restriction shall not apply to wine bars or to restaurants which derive more than fifty percent (50%) gross sales from food table service);
- (l) funeral home or store selling caskets;
- (m) mortuary;
- (n) automotive supplies and parts;
- (o) warehouse operation (not including storage incidental to the operation of any otherwise permissible business);
- (p) manufacturing operation (except for such manufacturing that is otherwise incidental to a permissible use);
- (q) industrial operation;
- (r) processing or rendering plant;
- (s) lumber yard;
- (t) central laundry, dry cleaning plant, or laundromat (except this prohibition shall not include any dry cleaning service only providing for pick-up and drop-off and not performing any cleaning on the premises);
- (u) any service station, car wash, or automotive repair facility, including without limitation any tire, battery and accessory facility;
- (v) residential uses, living quarters, sleeping apartments, hotel, motel, hostel or lodging rooms;
- (w) veterinary office, animal hospital or animal raising or boarding facilities;
- (x) thrift store, pawn shop, consignment shop, liquidation outlet, flea market, or similar establishment;
- (y) betting or other gaming establishment, facility or operation, including, but not limited to, off-track or sports betting parlor, table games such as black-jack or poker, slot

machines, video poker/black-jack/keno machines or similar devices (this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities so long as such governmental and/or charitable activities are incidental (i.e., less than ten percent (10%) of gross sales) to a permitted business operation being conducted in the Component);

(z) auditorium, meeting hall, church, or other house of worship;

(aa) dance or music hall, "disco", nightclub, or discotheque;

(bb) any medical office, clinic or surgical center performing or dispensing reproductive health services; and

(cc) any employment office, day labor service, or other enterprise or organization that offers laborers for hire.

ARTICLE XII. EASEMENTS, LICENSES AND ENCROACHMENTS

Section 12.1 Recording Data

All easements and licenses to which the Condominium is currently subject are recited in Exhibit "D" hereto. In addition, the Condominium may be subject to other easements or licenses granted by the Declarant pursuant to Article VIII of this Declaration.

Section 12.2 Non-Exclusive Easements

A Unit Owner and tenants of Units in the Condominium, and the members of their families and servants residing in their Units, and their guests and invitees, shall have a valid non-exclusive easement for the use of the Common Elements, subject to reasonable regulation in the Rules and Regulations of the Association; *provided, however* that the Association may temporarily suspend the Unit Owner's rights under the easement for the failure to pay assessments or to abide by the Association's rules and regulations for use of the Common Elements and facilities.

Section 12.3 Right of Ingress and Egress

A Unit Owner has an unrestricted right of ingress and egress to his or her Unit. Such right of ingress and egress is perpetual and passes with the transfer of ownership of the Unit.

Section 12.4 Encroachments

To the extent that the construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements results in a Unit or Common Element encroaching on another Unit or Common Element, a valid easement for both the encroachment and its maintenance shall exist for the entire period during which such encroachment exists;

provided, however, that a valid easement for the encroachment and its maintenance shall not exist if the physical boundaries of a Unit after the construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements is not in substantial accord with the description of those boundaries as described in this Declaration.

ARTICLE XIII. AMENDMENT OF DECLARATION

Section 13.1 Amendment by Unit Owners

Except as otherwise provided by the Act or this Declaration, and as limited by Article XVI herein, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Unit Owners to which at least sixty-seven (67) percent of the votes in the Association are allocated, or any larger majority this Declaration specifies. The procedure for amendment must follow the procedures of Section 82.067 of the Act.

Section 13.2 Amendment by Board of Directors or Declarant

The Board of Directors or the Declarant, if the Declarant owns a Unit that has never been occupied, may without a vote of the Unit Owners or approval of the Association amend the Declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal Home Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration.

Section 13.3 Amendment Restrictions

This Declaration may not be amended without the written consent of Declarant which in any way modifies, reduces, or eliminates any of the rights granted to Declarant herein, including without limitation, special declarant rights set forth in Article VII, Article VIII, Article XII, and Article XXIII. The provisions of this section shall survive and remain effective until termination of the period of Declarant control as set forth in Section 8.3 herein.

ARTICLE XIV. AMENDMENTS OF BYLAWS

Except as otherwise provided by law or this Declaration, the Bylaws may be amended only by (1) the affirmative vote or written consent, or any combination thereof, of a majority of the Board of Directors and the consent of the Declarant until the termination of the Declarant Control Period; or (2) by two-thirds (2/3) of the votes of the Association present, in person or by proxy, at any regular or special meeting. Notwithstanding the above, the percentage of votes or other approval necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

ARTICLE XV. TERMINATION

Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs must be approved by the vote of Owners of an aggregate Allocated Interests of eighty percent (80%) or more of the Condominium. Notwithstanding any lower requirement permitted by this Declaration or the Act, any actions to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Property must be agreed to by the vote of Unit Owners of an aggregate Allocated Interest of eighty percent (80%) or more of the Condominium. Subject to the foregoing, termination of the Condominium may be accomplished only in accordance with Section 82.068 of the Act.

ARTICLE XVI. MORTGAGE PROTECTION

Section 16.1 Notice of Actions

(a) The Association shall give timely written notice to each Eligible Mortgagee on any Unit in the Condominium of which it has received notice pursuant to subsection (b) of:

- (i) any condemnation or casualty loss that affects a material portion of the Condominium property or applicable Unit;
- (ii) any delinquency in the payment of assessments or charges owed by the Unit Owner more than sixty (60) days past due as to the applicable Unit;
- (iii) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- (iv) any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

(b) An Eligible Mortgagee on any Unit must notify the Association in writing of its name and address and inform the Association that it holds a security interest in a Unit. It must provide the Association with the Unit number and address of the Unit on which it holds a security interest.

Section 16.2 Consents

Notwithstanding any requirements permitted by this Declaration or the Act, no amendment of any material provision of the Governing Documents by the Association or the Unit Owners described in this Section shall be effective without the vote of at least 67 percent of the Unit Owners (or any greater Unit Owner vote required in this Declaration of the Act). A change to any of the following would be considered material:

- (i) voting rights;
- (ii) increases in assessments that raise the previously assessed amount by more than 25%; assessment liens, or priority of assessment liens;

- (iii) responsibility for maintenance and repairs;
- (iv) reallocation of interests in the General or Limited Common Elements, or rights to their use;
- (v) convertibility of Units into Common Elements or vice versa;
- (vi) expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium;
- (vii) hazard or fidelity insurance requirements;
- (viii) imposition of any major material change in the restrictions on the leasing of Units;
- (ix) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (x) restoration or repair the Condominium (after damage or partial condemnation) in a manner other than that specified in the Governing Documents; or
- (xi) any provisions that expressly benefit the mortgage holders, or guarantors.

Section 16.3 Financial Statements

To the extent the Association does not have an audited financial statement, any Eligible Mortgagee or Eligible Insurer shall have the right to have an audited financial statement prepared at its own expense.

Section 16.4 Working Capital

(a) The Declarant shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or service. The initial working capital fund established by the Declarant for the benefit of and to be funded by the Association shall be in an amount that is at least equal to two (2) months of estimated Common Expenses for each Unit. Each Unit's share (based on that Unit's Allocated Interest) of the working capital fund shall be collected either at the time the sale of the Unit is closed or when the control of the Condominium is transferred to the Unit Owners, whichever is earlier. Any amounts paid into the working capital fund shall not be considered as advance payments of regular Common Expense assessments and shall be in addition to such assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund for use by the Association when control of the Association is transferred to the Unit Owners. Upon each subsequent transfer or sale of a Unit to a third (3rd) party, an additional working capital amount at least equal to two (2) months of estimated Common Expenses for such Unit shall be due and payable to the Association upon closing of such sale or transfer. All payments into the working capital fund shall be non-refundable. The board, after termination of the Declarant Control Period, may, in its discretion, allocate all or any portion of the working capital to the replacement fund.

(b) The Declarant shall not use this working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. Upon sale of an unsold Unit, the Declarant shall be entitled to

reimburse itself for any funds it paid to the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when the Unit is sold.

Section 16.5 Reserve Fund

The Association shall maintain an adequate reserve fund for the maintenance and repair of the Common Elements, which shall be funded from regular monthly assessments for the Common Expenses.

ARTICLE XVII. ASSESSMENT AND COLLECTION OF COMMON EXPENSES

Section 17.1 Apportionment of Common Expenses

Except as otherwise provided by the Act or this Declaration, all Common Expenses shall be assessed against all Units in accordance with the allocations set out on Exhibit B. As shown on Exhibit B, each residential Unit shall be obligated to pay one (1) assessment, each Penthouse Unit shall be obligated to pay one and one-half (1.50) assessment, each Guest Suite shall be obligated to pay three-fourths (.75) of an assessment, and the Commercial Unit shall be obligated to pay one (1) assessment.

Section 17.2 Common Expenses Attributable to Fewer than all Units

(a) Any Common Expenses associated with the maintenance, repair, or replacement of components or elements attached to, planted on, or a part of, patios, decks, exterior surfaces, trim, siding, doors, windows, and storage area shall be assessed against the Unit or Units to which the Limited Common Element is assigned as a Common Expense assessment. Any quality issues, questions or variances shall be subject to the approval of the Board of Directors. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

(b) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against that Unit.

(c) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

(d) If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against the Unit Owner's Unit.

(f) Fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against a Unit Owner pursuant to the Governing Documents and the Act are enforceable as Common Expense assessments.

Section 17.3 Responsibility for Assessment of Common Expenses

The Board of Directors shall be responsible for levying and collecting general and special assessments for Common Expenses. For purpose of this Article XVII, "assessments" means regular and special assessments (including payments or obligations to reserve accounts), dues, fees, charges, interest, late fees, fines, collection costs, reasonable attorneys' fees, and any other amount due to the Association by the Unit Owner or levied against the Unit by the Association, all of which are enforceable as assessments under Section 82.113 of the Act, and are supported by the assessment lien created herein.

Section 17.4 Lien

The Association has a lien on the Units for a Common Expense assessment levied against the Unit, the Additional Assessments (as same is defined hereinbelow), dues, fees, charges, interest, late fees, fines, collection costs, reasonable attorneys' fees, and any other amount due to the Association by the Unit Owner or levied against the Unit by the Association, or fines imposed against a Unit Owner from the time the Common Expense assessment, fine, or other amount becomes due. Fees, charges, late charges, fines and interest charged pursuant to a Common Expense assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

A lien for Common Expense assessments will not be affected by the sale or transfer of the Unit, unless a foreclosure of a first mortgage is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Unit Owner from liability for paying further assessments, or the prior owner for payment of the amount owing prior to the foreclosure sale.

Section 17.5 Priority

The Association's lien for assessments has priority over any other lien, except as otherwise provided in Section 82.113(b) of the Act.

Section 17.6 Commencement of Common Expense Assessments

Monthly Common Expense assessments shall begin on the date of closing of a conveyance to a Unit Owner other than the Declarant and shall be due on the first day of each subsequent calendar month thereafter, without notice. Declarant shall pay the pro rata share of assessments for all unsold Units beginning one hundred eighty (180) days after the first Unit (excluding shell units) is conveyed and continuing thereafter until Declarant has sold or conveyed all Units owned by Declarant. The initial monthly Common Expense assessment for Condominium Units and Penthouse units per month shall be prorated for the first month from the date of closing, and with one (1) full monthly assessment prepaid at closing, together with an initial reserve assessment upon closing in an amount equal to two (2) monthly assessments as

working capital expenditures as set forth in Section 16.4(a). The initial monthly assessment for the eight (8) guest suites shall commence thirty (30) days following the issuance of the Certificate of Occupancy for the sixth (6th) floor of the Condominium. The initial monthly assessment for the Commercial Unit shall commence on the earlier of the issuance of the Certificate of Occupancy or occupancy of that Unit.

Section 17.7 No Waiver of Liability for Common Expenses

No Unit Owner may become exempt from liability for payment of Common Expense assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense assessments are made.

Section 17.8 Personal Liability of Unit Owners

The Unit Owner of a Unit, at the time a Common Expense assessment or portion of the assessment is due and payable, is personally liable for the Common Expense assessment or portion of the assessment that is due and payable, and is personally liable for the Common Expense assessment, which is secured by a continuing lien on the Unit Owner's Unit.

Personal liability for such Common Expenses assessments shall not pass to a successor in title to the Unit unless the successor agrees to assume the obligation.

Section 17.9 Remedies for Failure to Pay Assessments

The Association's remedies for a Unit Owner's failure to pay assessments levied by the Association include, but are not necessarily limited to, those remedies set forth in Section 82.102 and 82.113 of the Act.

Section 17.10 Additional Assessment

Unit Owners may rent their Units pursuant to the terms and conditions contained elsewhere in this Declaration. In the event a Unit Owner desires to rent his or her Unit, there must be a rental agreement signed by the tenant, a copy of which rental agreement must be provided to the Association prior to the tenant taking occupancy. Upon the execution of a rental agreement, the Unit Owner shall be obligated to pay to the Association an Additional Assessment in the amount of ten percent (10%) of the gross rental amount as set forth in the rental agreement, which Additional Assessment, together with any late fees, fines, collection costs, and reasonable attorneys' fees in connection with the collection of same, shall be supported by the continuing assessment lien created hereinabove. The Additional Assessment shall be payable to the Association on a monthly basis. Provided however, that Additional Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of Additional Assessments or impose special requirements for Owners

with a history of delinquent payment. Any Additional Assessment not paid within ten (10) days after the due date shall bear interest from the due date at the lesser of (i) eighteen percent (18%) or (ii) the maximum non-usurious rate of interest.

Notwithstanding anything contained herein to the contrary, the Board shall determine the sufficiency or insufficiency of the then-current Additional Assessment to reasonably meet the expenses for providing services in the Condominium, and may, at its sole discretion and without a vote by the Members, increase the Additional Assessment in an amount up to ten percent (10%) annually. The Additional Assessment may only be increased by more than ten percent (10%) annually if such increase is approved by Members in Good Standing who represent a majority of the votes in the Association present at a meeting called for said purpose at which a quorum is present in person or by proxy. The Additional Assessment shall not be adjusted more than once in a calendar year nor shall any increase be construed to take effect retroactively, unless otherwise approved by Members representing a majority of the votes subject to such Additional Assessment present at a meeting called for said purpose at which a quorum is present in person or by proxy.

Section 17.11 Declarant's Obligation

Notwithstanding anything contained herein to the contrary from the date of the initial assessment until the termination of the Declarant Control Period, or three (3) years from the Declarant's first conveyance of a unit, whichever is earlier, the Declarant shall periodically pay to the Association:

- (1) An amount equal to all operational expenses of the Association, less the operational expense portion of the assessments paid by Unit Owners other than the Declarant; or
- (2) The Common Expense liability allocated to each Unit owned by the Declarant.

ARTICLE XVIII. INTEREST RATE

Section 18.1 Interest on Delinquent Assessments

In the event of default in the payment of any monetary obligation to the Association, a Unit Owner shall be obligated to pay late fees as determined by the Board and interest on the principal amount, from the due date, at a rate to be determined, from time to time, by the Board of Directors, not to exceed the maximum permitted by law.

Section 18.2 Default Interest Rate

If the Board of Directors shall refuse or fail, from time to time, to determine a rate of interest, the rate of interest shall the highest maximum rate permitted by law.

ARTICLE XIX. RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its right to future income, including the right to receive Common Expense assessments, only by the affirmative vote of a majority of the Owners of Units at a meeting at which a quorum is present.

ARTICLE XX. PERSONS AND UNITS SUBJECT TO GOVERNING DOCUMENTS

Section 20.1 Compliance with Governing Documents; Uniform Applicability

All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Governing Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Unit constitutes agreement that the provisions of the Governing Documents are accepted and ratified by that Unit Owner, tenant, mortgagee or occupant. To the extent there are unsold Units owned by the Declarant, the Declarant shall enjoy the same duties as any other Unit Owner would as they relate to each individual unsold Unit. So long as the Declarant owns one or more Units, the Declarant shall be subject to the provisions of the Governing Documents.

Section 20.2 Adoption of Rules

The Board of Directors may adopt and amend Rules and Regulations regarding the use and occupancy of Units as it affects the Common Elements, the Limited Common Elements and the activities of occupants.

ARTICLE XXI. DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 21.1 Duty to Restore

Subject to Section 82.111 of the Act, a portion of the Condominium for which insurance is required under Section 82.111 that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) the Condominium is terminated;
- (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or
- (c) at least eighty (80) percent of the Unit Owners, including each Unit Owner of a Unit or assigned Limited Common Element that will not be rebuilt or repaired, and Eligible Mortgagees vote to not rebuild.

Section 21.2 Cost

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

ARTICLE XXII. CONDEMNATION

If part or all of the Condominium is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 82.007 of the Act.

ARTICLE XXIII. RIGHTS OF ACTION

Section 23.1 Rights of Action

The Association and any aggrieved Unit Owner shall have a right of action against the Declarant, a Unit Owner or any other person who fails to comply with the provisions of the Governing Documents or the decisions made by the Association. A Unit Owner has a right of action against the Association for a violation of the Governing Documents or the decision of the Association.

Section 23.2 Arbitration

Any controversies, claims or disputes involving Declarant, its representatives, the Association, or any Unit Owner which cannot be resolved by good faith negotiations shall be resolved by mandatory and binding arbitration and the following shall apply: (a) the arbitration shall be decided by one (1) arbitrator. The parties shall choose a mutually acceptable arbitrator, and in the event the parties cannot agree on the selection of the arbitrator, each party shall choose an arbitrator and those two (2) arbitrators shall agree upon the appointment of a third arbitrator who shall be the sole arbitrator; (b) the fees for the arbitration shall be shared equally by the parties and reimbursed to the prevailing party by the non-prevailing party, and such fees shall be consistent with the fees currently charged by arbitrators in Galveston County, Texas without regard to the amount in controversy; and (c) a final binding award by the arbitrator shall be made within thirty (30) days from the date of the first notice of the dispute unless extended by mutual agreement or good reason by the arbitrator. All decisions by the Arbitrator shall be final, and any judgment upon the award rendered by the Arbitrator may be confirmed, entered and enforced in any court having proper jurisdiction.

ARTICLE XXIV. INSURANCE

Section 24.1 General Provisions

The Board of Directors shall have authority to and shall purchase insurance for the Condominium as follows:

- A. Insurance on the buildings, including the Units (except as set forth in Section 24.2 below) and the Common Elements, against loss or damage by fire and loss or damage by all risks now or hereafter embraced by the so-called all-risk fire and extended coverage policy and any other extended coverage policy, policies, or endorsements thereto, designed for insuring condominium regimes in the State of Texas (with vandalism and malicious mischief endorsements), in amounts sufficient to prevent the Association of the Owners from acting as a co-insurer within the terms of the applicable policies, but in any event in an amount not less than the full insurable replacement cost thereof and which policy shall contain a replacement cost endorsement so long as the policy is commercially reasonably available. The "full insurable replacement cost" of the buildings, including the Units and the Common Elements, shall be determined from time to time but not less than once in a twelve-month period by the Board and the Board shall have the authority to obtain and pay for an appraisal by a person or organization selected by the Board in seeking such determination. The cost of any and all such appraisals shall be borne by the Common Expense fund.
- B. Insurance on the buildings against all loss or damage from explosion of boilers, heating apparatus, pressure valves and pressure pipes installed in, on or about said buildings, without co-insurance clause, so long as commercially reasonably available, in such amount as the Board may deem desirable.
- C. Comprehensive general liability, including medical payments insurance, and property damage insurance (including "umbrella" or "excess" coverage) against claims for personal injury or death or property damage suffered by the public or any Owner, the family, agent, employee or invitee of any Owner, occurring in, on or about the Common Elements or upon, in or about the driveways, roadways, walkways and passageways, on or adjoining the Condominium, which general liability and property damage insurance shall be in a minimum amount of \$1,000,000 combined single limit, or such greater amounts as the Board shall deem desirable.
- D. Such worker's compensation insurance as may be necessary to comply with applicable laws.
- E. Employer's liability insurance in such amount as the Board may deem desirable.
- F. Fidelity bonds indemnifying the Association, the Board and the Owners from loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association in such an amount as the Board may deem desirable. The Board may add its management agent, as an additional insured.
- G. Liability insurance insuring the Board and officers of the Association against any claims, losses, liabilities, damages or causes of action arising out of or in conjunction with or resulting from any act or omission in their representative capacity.

H. Such other insurance as may be required by the Texas Uniform Condominium Act or such other insurance in such reasonable amount as the Board shall deem desirable.

The premiums for all insurance required on behalf of the Association or the Owners pursuant to the provisions hereof shall be borne by the Common Expense Fund.

All insurance provided for in this Section shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of Texas if available. Policies of insurance of the character described in Subsections (A), (B) and (C) of this Section 24.1, if commercially reasonably available shall contain an endorsement naming as insureds the Association and each Owner as their interests may appear, shall contain standard mortgagee clause endorsements in favor of the mortgagee or mortgagees of each Unit, if any, as their respective interests may appear, shall be without contribution with regard to any other such policies of insurance carried individually by any Owner, whether such other insurance covers the Unit owned by such Owner and/or the additions and improvements made by such Owner to its respective Unit shall waive the right of the insurer of subrogation under the policy against any Owner or the Association; shall provide that such policy shall not be terminated for non-payment of premiums or for any other cause without at least thirty (30) days prior written notice to the Association and at least ten (10) days prior written notice to the Mortgagee of each Unit, if possible. All policies of insurance of the character described in Subsection (A), Section 24.1 shall be adjusted and settled for the benefit of the affected Owner(s) by the Board acting on behalf of, and as trustee for, the Owners, and the proceeds of such claim shall be paid to the Board as trustee for the Owners and their Mortgagees, as their interests may appear. Subject to the provisions contained in this Declaration, the proceeds paid under a policy must be disbursed first for the restoration of the damaged Common Elements and Units and Owners and mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Condominium regime is terminated.

Section 24.2 Individual Insurance

Each Owner shall be responsible for insurance on the Owner's Unit and the furnishings, interior walls (non-load bearing or non-shear), appliances and any portion of the Units that are not Common Elements, and personal property therein, including rugs and floor coverings to the extent not covered by the policies of casualty insurance obtained by the Association for the benefit of all Owners as above provided. The Association shall have the authority, without the obligation, to obtain insurance on all or any portion of the above-described contents of an Owner's Unit. All policies of insurance carried by each Owner shall be without contribution with respect to the policies of insurance obtained by the Association for the benefit of all the Owners as above set forth. Owners may carry individual policies of liability, at their own cost and expense, to provide for additional coverages and/or deductibles allocated to any loss.

Section 24.3 Subrogation

Each Owner and the Association hereby agree to waive any rights of subrogation against the Declarant and each other.

ARTICLE XXV. MISCELLANEOUS

Section 25.1 Appointment of Attorney-in-Fact

Each Unit Owner, by acceptance of a deed or other instrument of conveyance from Declarant or from any Unit Owner or grantor resulting in ownership of a Unit, shall be deemed to appoint the Association as his or her true and lawful attorney-in-fact (which shall be deemed to be irrevocable power of attorney coupled with an interest and not voidable due to the incapacity or disability of an Unit Owner) to act in connection with all matters concerning the maintenance of insurance policies and the destruction, repair or obsolescence of the Condominium, in whole or in part. Without limiting the generality of the foregoing, the Association, by and through its President or Vice President, shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefore, to collect proceeds, to institute and prosecute litigation or arbitration, to pay all costs associated with its activities as Common Expenses (to the extent the proceeds received from such insurance are not adequate to pay such costs), to administer the distribution of such proceeds in connection with any reconstruction or repair, to distribute any remaining proceeds to Unit Owners and their mortgagees (subject to the provisions of the Governing Documents and the Act) as their interests may appear, to execute releases of liability, and to execute all documents and to do all things on behalf of the Unit Owners and the Condominium as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters (other than exercising any voting rights in determining whether to repair or reconstruct). The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Unit (except to the extent available by endorsement as herein provided) or covering the liability of any Unit Owner for occurrence not caused or connected with the Association's operation, maintenance or use of the Condominium.

Section 25.2 Security

The Association and/or Declarant and their respective agents and employees shall not in any way be considered an insurer or guarantor of security within the Property. Neither shall the Declarant nor the Association be held liable for any loss or damages by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. The Association and/or Declarant and their respective agents and employees do not represent or warrant that any fire protection, burglar alarm systems, access control systems, patrol services, surveillance equipment, monitoring devices, or other security systems (if any are present) will prevent loss by fire, smoke, burglary, theft, hold-up or otherwise, nor that fire protection, burglar alarm systems, access control systems, patrol services, surveillance equipment, monitoring devices or other

security systems will in all cases provide the detection or protection for which the system is designed or intended. The Association is not an insurer and each Owner and occupant of any Unit and each tenant, guest and invitee of any Owner assumes all risks for loss or damage to persons, to Units and to the contents of Units and acknowledges that neither the Declarant nor the Association has made no representations or warranties nor has the Association, any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any fire protection, burglar alarm systems, access control systems, patrol services, surveillance equipment, monitoring devices or other security systems recommended or installed or any security measures undertaken within the Property.

Section 25.3 Waiver of Environmental Conditions

The term "Declarant" as used in this Section 25.3 shall have the meaning set forth in ARTICLE I, Section 1.2 hereof and shall further include, without limitation, the Declarant, its general partner(s), partners, directors, managers, officers, employees, agents, contractors, sub-contractors, design consultants, architects, advisors, brokers, sales personnel and marketing agents. The term "Association" as used in this Section 25.3 shall have the meaning set forth in ARTICLE I, Section 1.2 hereof and shall further include, without limitation, the Association, its past and present Directors, managers, employees, and agents. The Declarant and the Association shall not in any way be considered an insurer or grantor of environmental conditions or indoor air quality within the Condominium. Neither shall the Declarant or the Association be held liable for any loss or damage by reason of or failure to provide adequate indoor air quality or any adverse environmental conditions. The Declarant and the Association do not represent or warrant that any construction materials, air filters, mechanical, heating, ventilating or air conditioning systems and chemicals necessary for the cleaning or pest control of the condominium will prevent the existence or spread of biological organisms, cooking odors, animal dander, dust mites, fungi, pollen, tobacco smoke, dust or the transmission of interior or exterior noise levels. The Declarant and the Association are not an insurer and each Owner and occupant of any Unit and each tenant, guest and invitee of any Owner assumes all risks for indoor air quality and environmental conditions and acknowledges that the Declarant and the Association have made no representations or warranties nor has the Declarant and the Association, any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to the air quality within the Condominium.

Section 25.4 Captions

The captions contained in the Governing Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Governing Documents or the intent of any provision thereof.

Section 25.5 Gender

The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Governing Documents so requires.

Section 25.6 Waiver

No provision contained in the Governing Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 25.7 Invalidity

The invalidity of any of the Governing Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and if a provision is invalid, all of the other provisions of the Governing Documents shall continue in full force and effect.

Section 25.8 Conflict Between Provisions

In the event of any conflict among the terms and provisions of this Declaration, the Certificate of Formation of the Association, the By-Laws, the Rules and Regulations or applicable law, or between any of them, the By-Laws shall control over the Rules and Regulations; the Certificate of Formation shall control over both the By-Laws and the Rules and Regulations; this Declaration shall control over the Certificate of Formation, the By-Laws and the Rules and Regulations; and applicable law shall control over all of the foregoing.

Section 25.9 Alteration of Boundaries of Residence Units

(a) If one person, firm or entity (including Declarant) is the Owner of all or part of two (2) Units which are adjoining horizontally (on the same floor of the Buildings) or if two (2) Owners of adjoining Units so agree, then such Owner or Owners shall have the right, upon the Board's prior written consent, to remove all or any part of any intervening partition (which is not load bearing) or to create doorways or other openings in such partition or floor which may in whole or in part be a common Element, so long as no portion of any load bearing wall or load bearing column or structural slab is weakened or removed and no portion of any Common Element other than that partition is damaged, destroyed or endangered. In any of such events, the Owner or Owners involved may relocate the boundaries between adjoining Units by causing an appropriate instrument of amendment to this Declaration to be prepared and executed by such Owners, which instrument, in order to be binding, must first be approved by the Board, in writing and shall be joined in by the President of the Association (and the Mortgagees, if any, of such Units) and filed for record in the Real Property Records of Galveston County, Texas. The instrument of amendment (i) shall show the boundaries between those Units which are being relocated, (ii) shall recite the occurrence of any conveyance between the Owners of such

adjacent Units, and (iii) shall specify any reasonable reallocation as agreed upon between Owners of the Units involved of the aggregate Ownership Interests in the Common Elements pertaining to those Units. Such plats and floor plans as may be necessary to show the actual boundaries between the Units involved shall be certified as to their accuracy by a registered architect or engineer. Any Owners taking any of the actions permitted by this subsection shall do so at their sole cost, risk and expense and shall agree, in form satisfactory, to the extent to indemnify and hold all other Owners and the Association harmless from any cost, expense, damage or liability arising or occurring as a result thereof, which obligation shall be secured by a bond in such amount and form as the Board shall determine.

(b) At any time prior to election of the Fully Elected Board, the Declarant shall have the right, at its option and sole cost and expense, without the consent of other Owners or the representative or representatives of any Mortgagee, to (i) make alterations, additions or improvements in, to and upon Units owned by the Declarant (hereinafter called "Declarant-Owned Units"), whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Declarant-Owned Unit; (iii) change the size and/or number of Declarant-Owned Units; (including those resulting from subdivision or otherwise) into one or more Units, combining separate Declarant-Owned Units (including those resulting from such subdivision or otherwise) into one or more Units, alter the boundary walls between any Declarant-Owned Units, or otherwise; and (iv) reappportion among the Declarant-Owned Units affected by such change in size or number pursuant to the preceding clause their appurtenant interest in the Common Elements; provided, however, that the percentage ownership interest in the Common Elements of any Unit (other than Declarant-Owned Units) shall not be changed by reason thereof. Notwithstanding anything to the contrary in paragraphs (a) and (b) of this Section 25.9, no amendment of this Declaration shall be made pursuant to the provisions of this Section 25.9 unless such amendment is approved in accordance with the amendment provisions contained in this Declaration unless the Owners and Mortgagee, if any, of such Units shall comply with all laws applicable thereto and shall agree to hold all other Owners and the Association harmless from any liability arising therefrom. Notwithstanding anything contained herein to the contrary, the provisions of this Section 25.9 shall not be added to, amended or deleted without the prior written consent of the Declarant. The Declarant shall also have the authority, at its sole option, cost and expense, to make alterations or improvements to the Common Elements without the prior consent of the Board, other Owners or the representative or representatives of holders of any Mortgage. No Owner shall ever be assessed for any such changes or improvements done by the Declarant pursuant to this provision. In the event of any such alteration, combination or improvement, the Declarant, at its sole cost and expense, shall file any amendment to this Declaration necessary to reflect such changes or improvement. If Declarant exercises its rights hereunder, Declarant shall record

Owners of the adjoining Units have specified a reallocation between their Units of their allocated interests, the application must state the proposed reallocations. Unless the Board determines the reallocation is unreasonable, the Association shall prepare an amendment at the expense of the applying Unit Owners involved, that identifies the Units involved, states the reallocation to be executed by the applying Unit Owners, and contains words of conveyance between them. At the expense of the applying Unit Owners, the Association, without the joinder of any other Owners, shall prepare and record the amendment and plats or plans necessary to show the actual boundaries between adjoining units, and the units' dimensions and identifying numbers.

A combined Unit may be subdivided back to its original configuration as originally platted, into two or more Units. Subject to the conditions contained in this Declaration, upon a written application of a Unit Owner to subdivide a Unit and after payment by the Unit Owner of the cost of preparing and recording amendments and plats, the Association shall prepare, execute, and record an amendment to the Declaration, including the plats and plans, subdividing the Unit. The amendment to the Declaration must be executed by the Owner(s) of the Unit subdivided, assign an identifying number to each subsequent Unit created, and reallocate the allocated interests formerly allocated to the subdivided Unit to the new Units in any reasonable manner prescribed by the Owner of the subdivided Unit.

Other than consolidation pursuant to this Section 25.9, all other amendments to the Declaration must be made in accordance with Section 10.1 hereof.

Section 25.10 Correction of Errors

In addition to those rights set out in this Declaration, Declarant reserves the continuing right until election of the Fully Elected Board, without the consent of other Owners or representatives of any Mortgagee, to amend this Declaration or the By-Laws for the purpose of clarifying or resolving any ambiguities or conflicts herein, for correcting any misstatements or errors or omissions herein, and for the purpose of revising the plats and plans.

Section 25.11. Enforcement

The Board or any Owner shall have the right to enforce, by an action at law or in equity, all terms and provisions hereof. Failure by the Board or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce such covenant or restriction thereafter.

Section 25.12 View Impairment

relocate, prune, or thin trees or shrubs on the Common Area. The Declarant and the Association shall have the right to add trees and other landscaping to the Common Area. There shall be no express or implied easements for view purposes or for the passage of light and air.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its general partner and duly authorized agent this 11th day of July, 2007.

Emerald Tower, Ltd., a Texas limited partnership
By: Sunhill International Corporation, its general partner

By: *[Signature]*
NAMIR FAIDI, President

THE STATE OF TEXAS §

COUNTY OF HARRIS §

Before me, the undersigned authority, on this 11th day of July, 2007, personally appeared NAMIR FAIDI, as President of Sunhill International Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of such corporation.

[Signature]
Notary Public in and for the State of Texas

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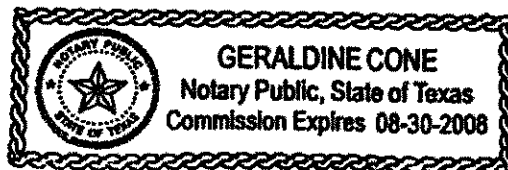


Exhibit A
Description of Land
METES AND BOUNDS DESCRIPTION
OF 1.0442 ACRES OF LAND SITUATED IN
THE CITY OF GALVESTON, GALVESTON COUNTY, TEXAS

BEING 1.0442 acres (45,485 square feet) of land situated in the City of Galveston, Galveston County, Texas, and being all Lots 1-4, Block 245, City of Galveston and the abutting 10 foot width along the north line of Lots 2-4, Block 245 (abandoned by City of Galveston by ordinance of record under Volume 1067, Page 341 of the Galveston County Deed Records conveyed to Seawall, Ltd. under Galveston County Clerk File No. 2004-013518 (G.C.C.F. No.) of Official Public Records of Real Property Galveston County, Texas (O.P.R.O.R.P.G.C.T.) being all of Lots 5-7, Block 245 and a portion of the abandoned 5th Street right-of-way (designated as Tract I & II) conveyed to 500 Seawall, Ltd. by G.C.C.F. No. 2003-019138, Code No. 018-25-0234 of said Official Public Records, and a portion of a abandoned 20' x 295' lying between Lots 1 through 7, and Lots 8 through 14 of Block 245 per unrecorded City of Galveston Ordinance No. 03-055); said 1.0442 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a "X" cut found in concrete at the intersection of the existing easterly right of way line of University Boulevard (80' R.O.W.) with the existing southerly right of way line of Avenue "H" (70' R.O.W.);

THENCE, North 71°18'50" East, along the existing southerly right of way line of Avenue "H", being the northerly line of Lot 1, a distance of 43.00 feet to a point for corner in the westerly line of said Lot 2;

THENCE, North 18°41'10" West, continuing along the existing southerly right of way line of Avenue "H", being the westerly line of said Lot 2, a distance of 10.00 feet to a "X" cut found in concrete for corner;

THENCE, North 71°18'50" East, continuing along the existing southerly right of way line of Avenue "H", a distance of 128.50 feet for corner, from which a 1-inch iron pipe found in the ground South 00°21' West, a distance of 0.20 feet;

THENCE, South 18°41'10" East, continuing along the existing southerly right of way line of Avenue "H", a distance of 10.00 feet to a point for corner;

THENCE, South 18°41'10" East, along the centerline of said abandoned 5th Street, a distance of 130.00 feet to a 1-inch iron pipe found at the intersection of the centerline of said abandoned Street with the centerline of said abandoned 20 foot wide Alley;

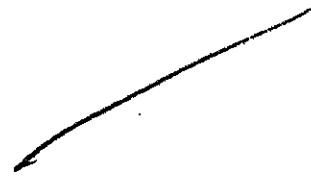
THENCE, South 71°18'50" West, along the centerline of said abandoned 20 foot wide Alley a distance of 340.00 feet to a point in the existing easterly right of way line of University Boulevard, from which a "X" cut found in concrete for the southwesterly corner of said lot bears North 18°41'10" West, a distance of 10.00 feet;

THENCE, North 18°41'10" West, along the existing easterly right of way line of University Boulevard, a distance of 130.00 feet to the POINT OF BEGINNING and containing 1.00 acres (45,485 square feet) of land.

Bearings are based on the Texas State Plane Coordinate System, South Central Zone, NAD 83 (feet)

**Prepared By:
Grace Y. Cervin, RPLS NO. 5564
GeoSolutions, LTD.
1440 Lake Front Circle St. 110
The Woodlands, Texas 77380
10-29-04
Job:03034003-EXHB-003**

Exhibit B
Allocated Interests



EMERALD BY THE SEA CONDOMINIUMS

SCHEDULE OF PERCENTAGE OWNERSHIP INTEREST, VOTING AND ASSESSMENT BASIS

NOTES: Unit Percentage Ownership Interest calculations include Terrace square footage.
Parking Spaces and Storage Areas have not been included in calculations.

	Unit #	Unit Type	Interior Sq.Ft.	Balcony/ Terrace Sq.Ft.	Total Sq.Ft.	Unit Percentage Ownership Interest	Unit Basis Voting Asses
1	701	Diamond	1,417	200	1,617	0.887%	1
2	702	Princess	832	113	945	0.519%	1
3	703	Sapphire	1,082	113	1,195	0.656%	1
4	704	Sapphire	1,082	113	1,195	0.656%	1
5	705	Princess	832	113	945	0.519%	1
6	706	Diamond	1,417	200	1,617	0.887%	1
7	707	Topaz	1,015	87	1,102	0.605%	1
8	708	Emerald-A	1,619	157	1,776	0.975%	1
9	709	Ruby 09	1,207	106	1,313	0.721%	1
10	710	Platinum 10	1,168	207	1,375	0.755%	1
11	711	Ruby 11	1,190	322	1,512	0.830%	1
12	712	Platinum 12	1,183	192	1,375	0.755%	1
13	713	Jewel Box	917	97	1,014	0.556%	1
14	714	Emerald-A	1,619	157	1,776	0.975%	1
15	715	Topaz	1,015	87	1,102	0.605%	1
	TOTAL - FLOOR 7		17,595	2,264	19,859	10.898%	1

16	801	Diamond	1,417	200	1,617	0.887%	1
17	802	Princess	832	113	945	0.519%	1
18	803	Sapphire	1,082	113	1,195	0.656%	1
19	804	Sapphire	1,082	113	1,195	0.656%	1
20	805	Princess	832	113	945	0.519%	1
21	806	Diamond	1,417	200	1,617	0.887%	1
22	807	Topaz	1,015	87	1,102	0.605%	1
23	808	Emerald-A	1,619	157	1,776	0.975%	1
24	809	Ruby 09	1,207	106	1,313	0.721%	1
25	810	Platinum 10	1,168	207	1,375	0.755%	1
26	811	Ruby 11	1,190	322	1,512	0.830%	1
27	812	Platinum 12	1,183	192	1,375	0.755%	1
28	813	Jewel Box	917	97	1,014	0.556%	1
29	814	Emerald-A	1,619	157	1,776	0.975%	1
30	815	Topaz	1,015	87	1,102	0.605%	1
	TOTAL - FLOOR 8		17,595	2,264	19,859	10.898%	1

31	901	Diamond	1,417	200	1,617	0.887%	1
32	902	Princess	832	113	945	0.519%	1
33	903	Sapphire	1,082	113	1,195	0.656%	1
34	904	Sapphire	1,082	113	1,195	0.656%	1
35	905	Princess	832	113	945	0.519%	1
36	906	Diamond	1,417	200	1,617	0.887%	1

EMERALD BY THE SEA CONDOMINIUMS

SCHEDULE OF PERCENTAGE OWNERSHIP INTEREST, VOTING AND ASSESSMENT BASIS

NOTES: Unit Percentage Ownership Interest calculations include Terrace square footage.
Parking Spaces and Storage Areas have not been included in calculations.

Unit #	Unit Type	Interior Sq.Ft.	Balcony/ Terrace Sq.Ft.	Total Sq.Ft.	Unit Percentage Ownership Interest	U Basi Votin Asses
TOTAL - FLOOR 9		17,595	2,264	19,859	10.898%	14

EMERALD BY THE SEA CONDOMINIUMS

SCHEDULE OF PERCENTAGE OWNERSHIP INTEREST, VOTING AND ASSESSMENT BASIS

NOTES: Unit Percentage Ownership Interest calculations include Terrace square footage.
Parking Spaces and Storage Areas have not been included in calculations.

	Unit #	Unit Type	Interior Sq.Ft.	Balcony/ Terrace Sq.Ft.	Total Sq.Ft.	Unit Percentage Ownership Interest	Unit Basis Voting Asses
46	1001	Diamond	1,417	200	1,617	0.887%	1
47	1002	Princess	832	113	945	0.519%	1
48	1003	Sapphire	1,082	113	1,195	0.656%	1
49	1004	Sapphire	1,082	113	1,195	0.656%	1
50	1005	Princess	832	113	945	0.519%	1
51	1006	Diamond	1,417	200	1,617	0.887%	1
52	1007	Topaz	1,015	87	1,102	0.605%	1
53	1008	Emerald-A	1,619	157	1,776	0.975%	1
54	1009	Ruby 09	1,207	106	1,313	0.721%	1
55	1010	Platinum 10	1,168	207	1,375	0.755%	1
56	1011	Ruby 11	1,190	322	1,512	0.830%	1
57	1012	Platinum 12	1,183	192	1,375	0.755%	1
58	1013	Jewel Box	917	97	1,014	0.556%	1
59	1014	Emerald-A	1,619	157	1,776	0.975%	1
60	1015	Topaz	1,015	87	1,102	0.605%	1
	TOTAL - FLOOR 10		17,595	2,264	19,859	10.898%	15

61	1101	Diamond	1,417	200	1,617	0.887%	1
62	1102	Princess	832	113	945	0.519%	1
63	1103	Sapphire	1,082	113	1,195	0.656%	1
64	1104	Sapphire	1,082	113	1,195	0.656%	1
65	1105	Princess	832	113	945	0.519%	1
66	1106	Diamond	1,417	200	1,617	0.887%	1
67	1107	Topaz	1,015	87	1,102	0.605%	1
68	1108	Emerald-A	1,619	157	1,776	0.975%	1
69	1109	Ruby 09	1,207	106	1,313	0.721%	1
70	1110	Platinum 10	1,168	207	1,375	0.755%	1
71	1111	Ruby 11	1,190	322	1,512	0.830%	1
72	1112	Platinum 12	1,183	192	1,375	0.755%	1
73	1113	Jewel Box	917	97	1,014	0.556%	1
74	1114	Emerald-A	1,619	157	1,776	0.975%	1
75	1115	Topaz	1,015	87	1,102	0.605%	1
	TOTAL - FLOOR 11		17,595	2,264	19,859	10.898%	15

76	1201	Diamond	1,417	200	1,617	0.887%	1
77	1202	Princess	832	113	945	0.519%	1
78	1203	Sapphire	1,082	113	1,195	0.656%	1
79	1204	Sapphire	1,082	113	1,195	0.656%	1
80	1205	Princess	832	113	945	0.519%	1
81	1206	Diamond	1,417	200	1,617	0.887%	1

EMERALD BY THE SEA CONDOMINIUMS

SCHEDULE OF PERCENTAGE OWNERSHIP INTEREST, VOTING AND ASSESSMENT BASIS

NOTES: Unit Percentage Ownership Interest calculations include Terrace square footage.
Parking Spaces and Storage Areas have not been included in calculations.

Unit #	Unit Type	Interior Sq.Ft.	Balcony/ Terrace Sq.Ft.	Total Sq.Ft.	Unit Percentage Ownership Interest	Unit Basis Voting Asses
TOTAL - FLOOR 12		17,523	2,264	19,787	10.858%	15

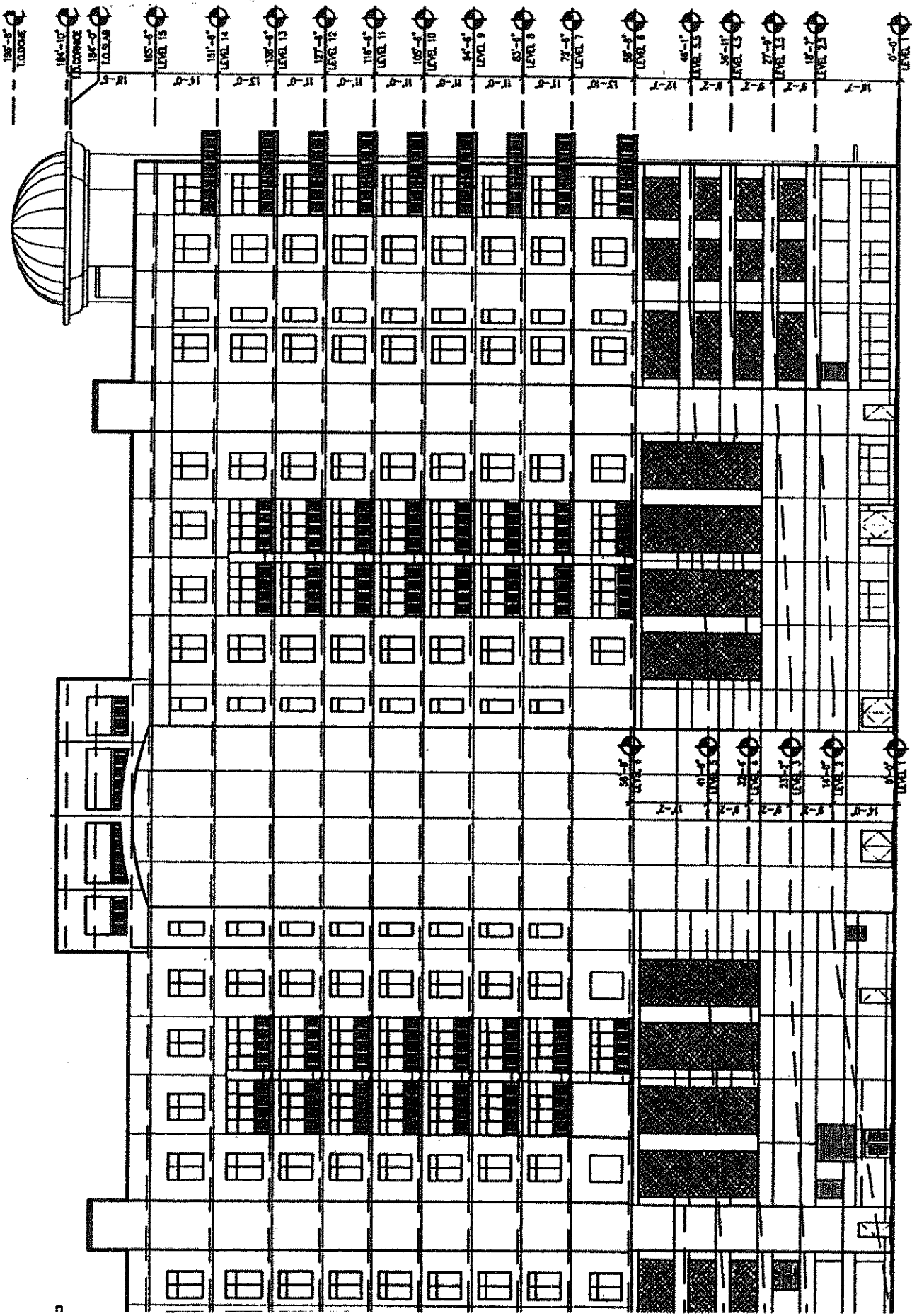
EMERALD BY THE SEA CONDOMINIUMS

SCHEDULE OF PERCENTAGE OWNERSHIP INTEREST, VOTING AND ASSESSMENT BASIS

NOTES: Unit Percentage Ownership Interest calculations include Terrace square footage.
Parking Spaces and Storage Areas have not been included in calculations.

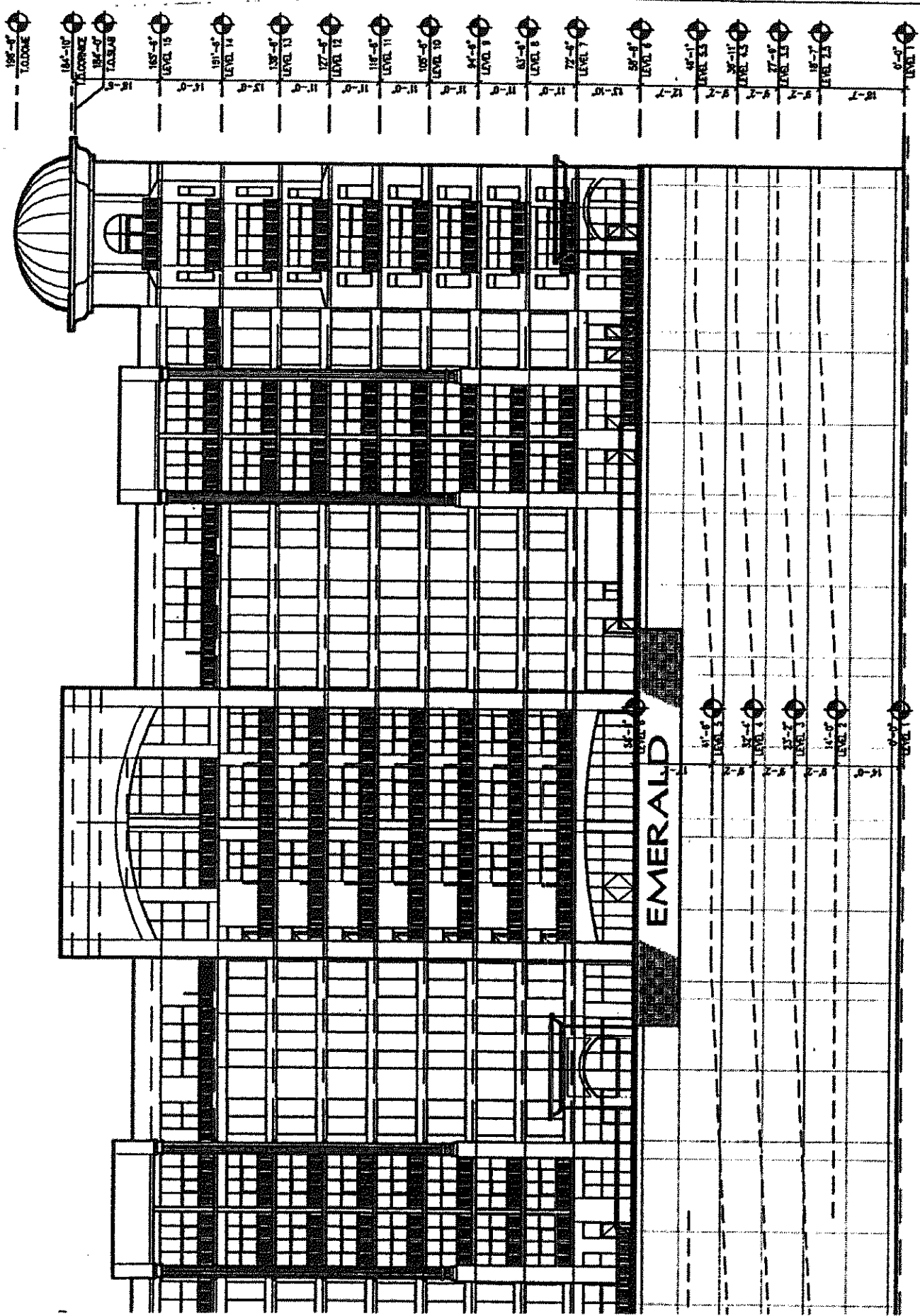
	Unit #	Unit Type	Interior Sq.Ft.	Balcony/ Terrace Sq.Ft.	Total Sq.Ft.	Unit Percentage Ownership Interest	Un Basis Voting Assess
91	1301	Diamond	1,417	200	1,617	0.887%	1.
92	1302	Princess	832	113	945	0.519%	1.
93	1303	Sapphire	1,082	113	1,195	0.656%	1.
94	1304	Sapphire	1,082	113	1,195	0.656%	1.
95	1305	Princess	832	113	945	0.519%	1.
96	1306	Diamond	1,417	200	1,617	0.887%	1.
97	1307	Topaz	1,015	87	1,102	0.605%	1.
98	1308	Emerald-B	1,583	157	1,740	0.955%	1.
99	1309	Ruby 09	1,207	106	1,313	0.721%	1.
100	1310	Platinum 10	1,168	207	1,375	0.755%	1.
101	1311	Ruby 11	1,190	322	1,512	0.830%	1.
102	1312	Platinum 12	1,183	192	1,375	0.755%	1.
103	1313	Jewel Box	917	97	1,014	0.556%	1.
104	1314	Emerald-B	1,583	157	1,740	0.955%	1.
105	1315	Topaz	1,015	87	1,102	0.605%	1.
	TOTAL - FLOOR 13		17,523	2,264	19,787	10.858%	15
106	1401	Harry Winston	2,498	605	3,103	1.703%	1.
107	1402	Harry Winston	2,498	605	3,103	1.703%	1.
108	1403	Cartier	2,383	368	2,751	1.510%	1.
109	1404	Bulgari	2,617	486	3,103	1.703%	1.
110	1405	Tiffany	2,804	683	3,487	1.913%	1.
111	1406	Tiffany	2,804	683	3,487	1.913%	1.
112	1407	Bulgari	2,617	486	3,103	1.703%	1.
113	1408	Cartier	2,383	368	2,751	1.510%	1.
	TOTAL - FLOORS 14 & 15		20,604	4,284	24,888	13.657%	12
114	Guest 1	Guest Unit	933	183	1,116	0.612%	0.
115	Guest 2	Guest Unit	1,014	84	1,098	0.603%	0.
116	Guest 3	Guest Unit	804	140	944	0.518%	0.
117	Guest 4	Guest Unit	1,453	302	1,755	0.963%	0.
118	Guest 5	Guest Unit	947	194	1,141	0.626%	0.
119	Guest 6	Guest Unit	579	0	579	0.318%	0.
120	Guest 7	Guest Unit	810	112	922	0.506%	0.
121	Guest 8	Guest Unit	810	112	922	0.506%	0.
	TOTAL - GUEST UNITS		7,350	1,127	8,477	4.652%	6.
122	100	Commercial Unit	10,000	0	10,000	5.487%	1.
	TOTAL - Commercial Unit		10,000	0	10,000	5.487%	1.

Exhibit C
Site Plan and Floor Plans



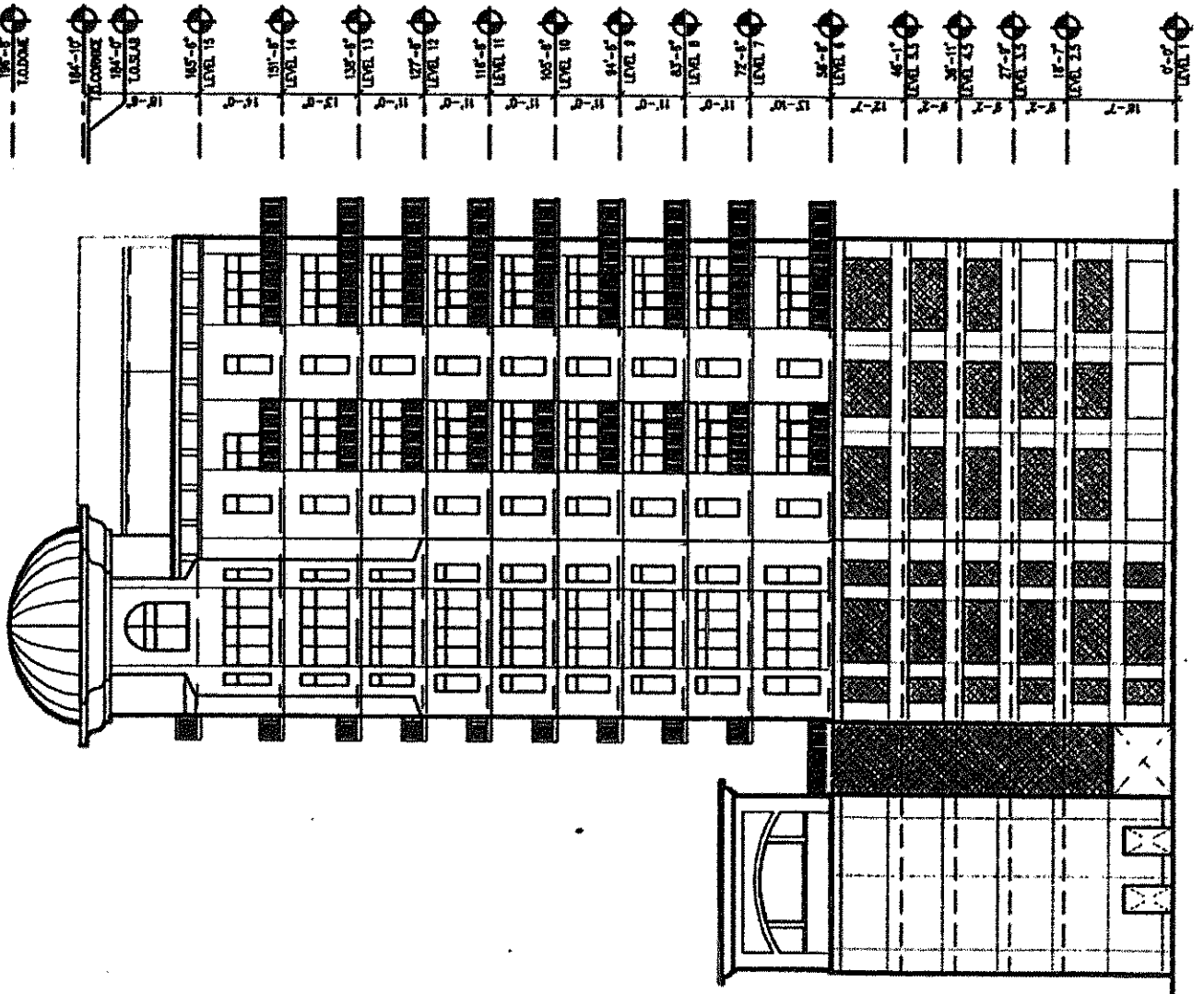
Everything that is not a UNIT is COMMON AREA.
 Drawn to scale.

NORTH ELEVATION



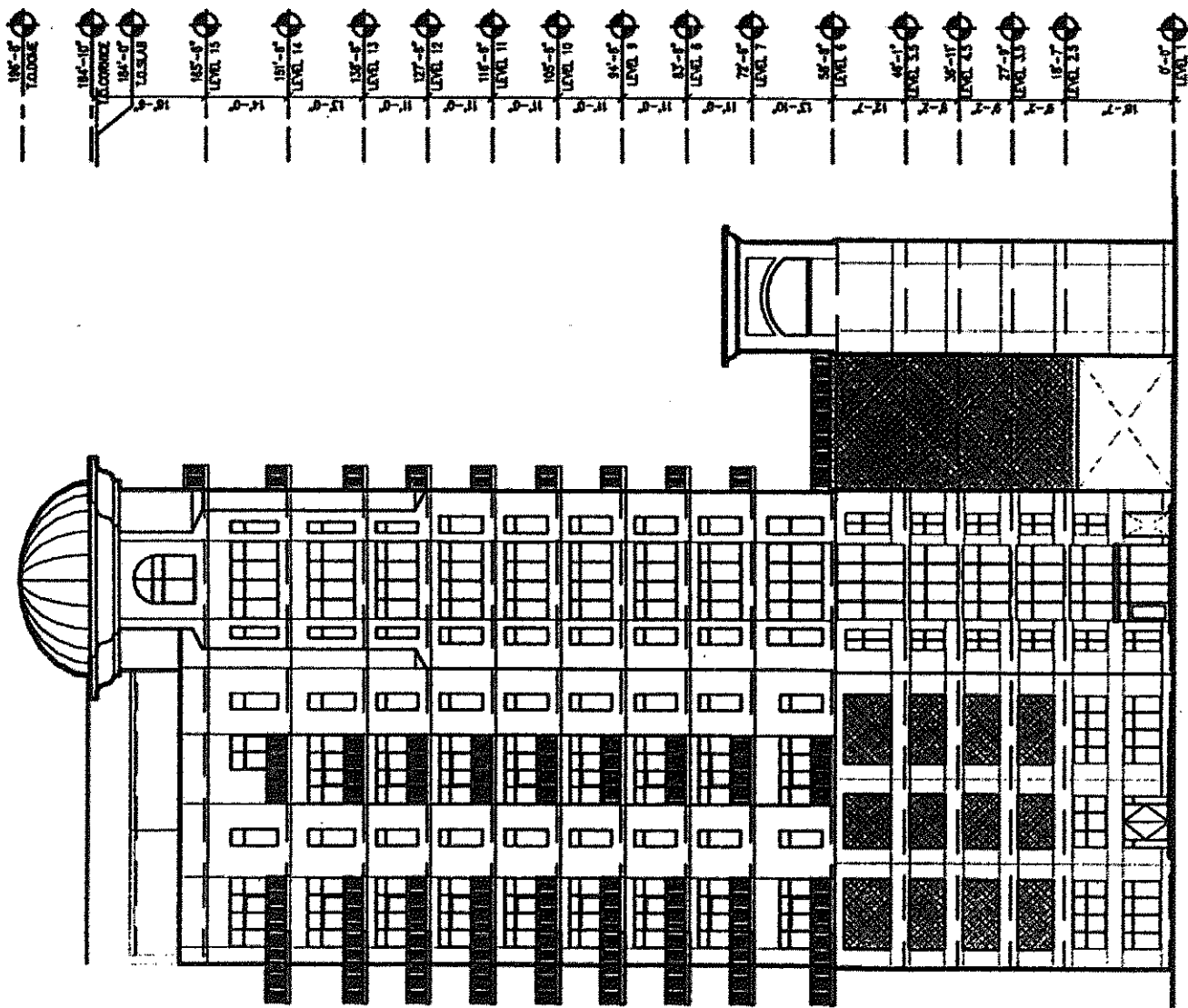
Everything that is not a UNIT is COMMON AREA.
 Drawn to scale.

SOUTH ELEVATION



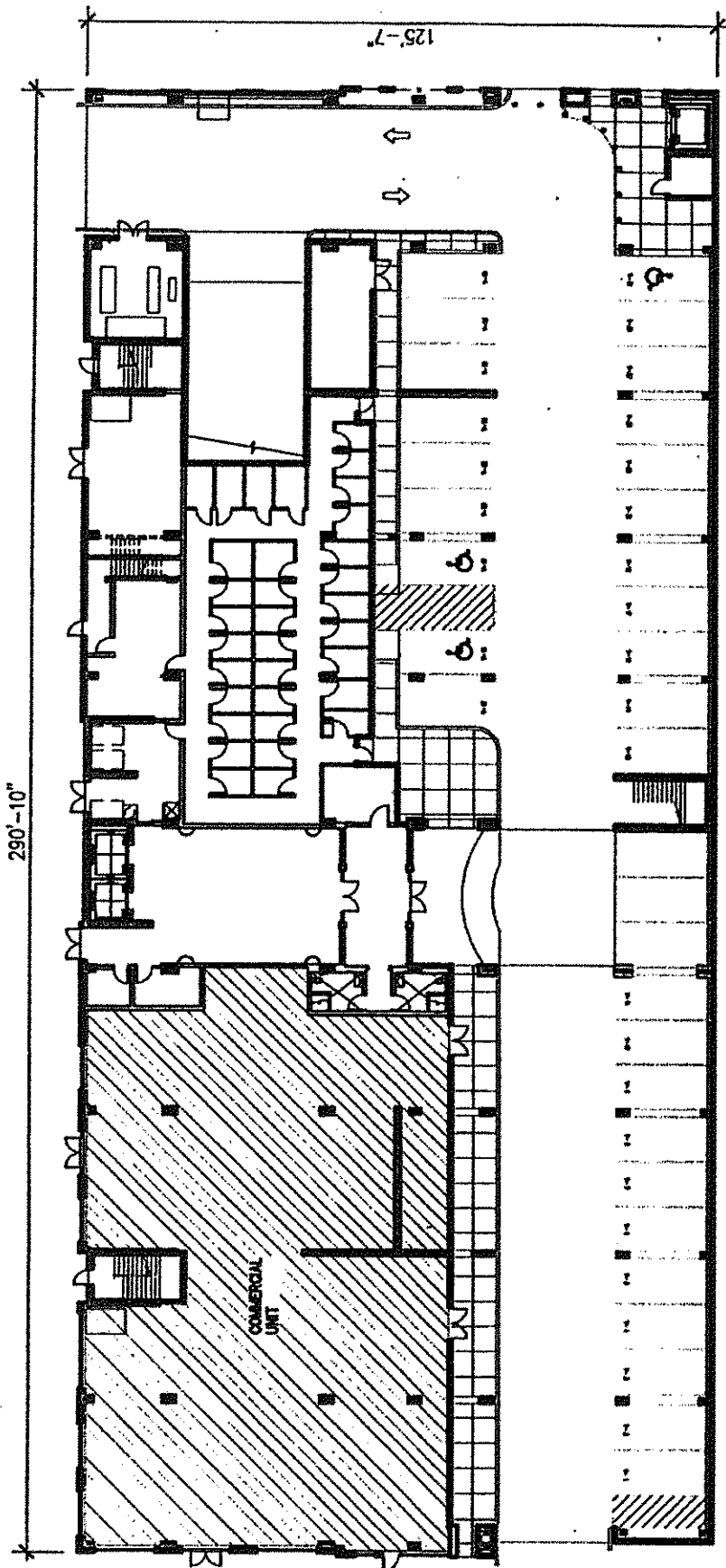
Everything that is not a UNIT is COMMON AREA.
 Drawn to scale.

EAST ELEVATION



Everything that is not a UNIT is COMMON AREA.
 Drawn to scale.

WEST ELEVATION



290'-10"

125'-7"

COMMERCIAL
UNIT

Everything that is not a UNIT is COMMON AREA.
Drawn to scale.

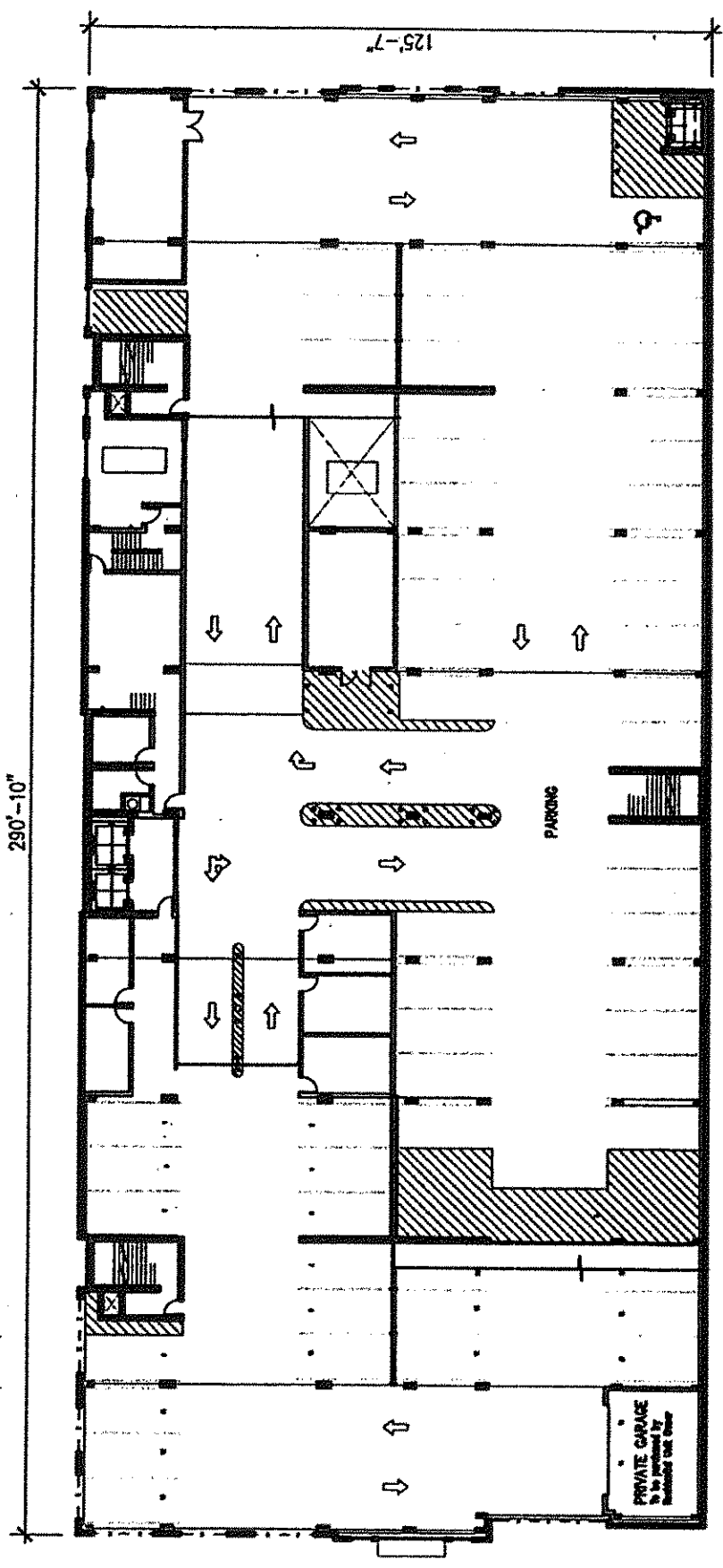
0' 32' 64'

1ST FLOOR PLAN

EMERALD CONDOMINIUMS GALVESTON, TEXAS

290'-10"

125'-7"

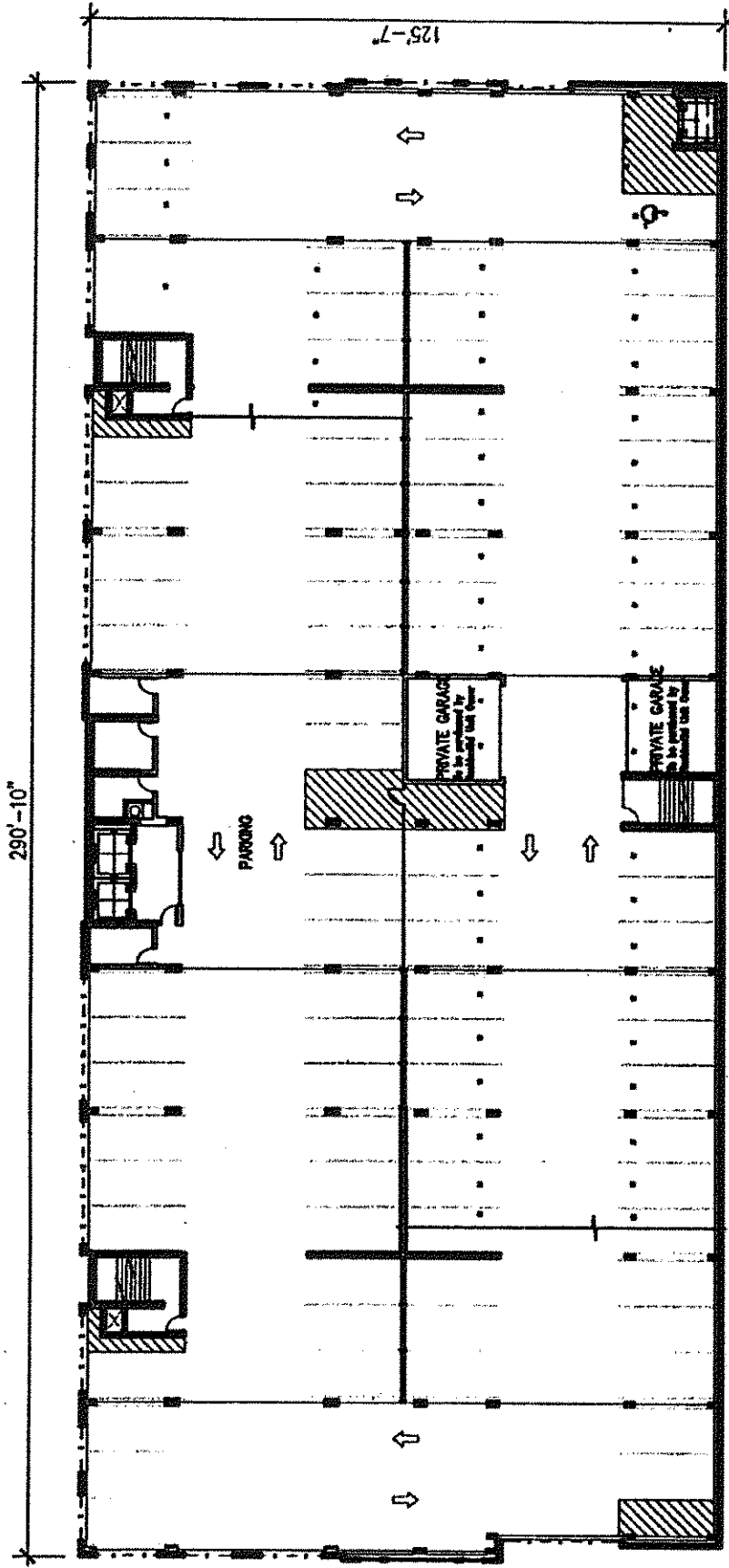


Everything that is not a UNIT is COMMON AREA.
 Drawn to scale.

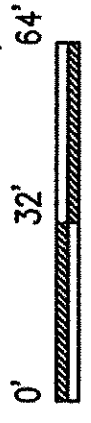


2ND FLOOR PLAN

EMERALD CONDOMINIUMS GALVESTON, TEXAS



Everything that is not a UNIT is COMMON AREA.
 Drawn to scale.

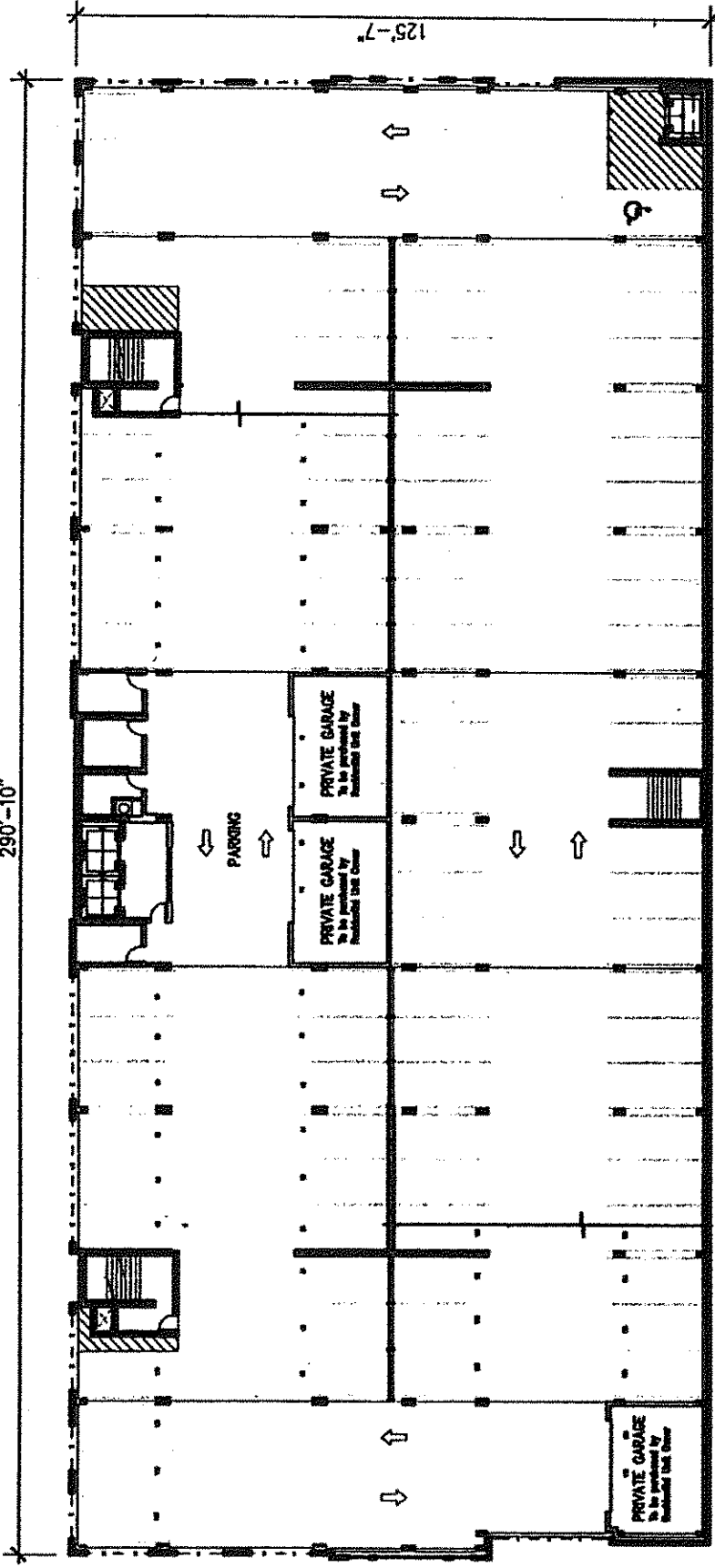


3RD FLOOR PLAN

EMERALD CONDOMINIUMS GALVESTON, TEXAS

290'-10"

125'-7"



Everything that is not a UNIT is COMMON AREA.
Drawn to scale.

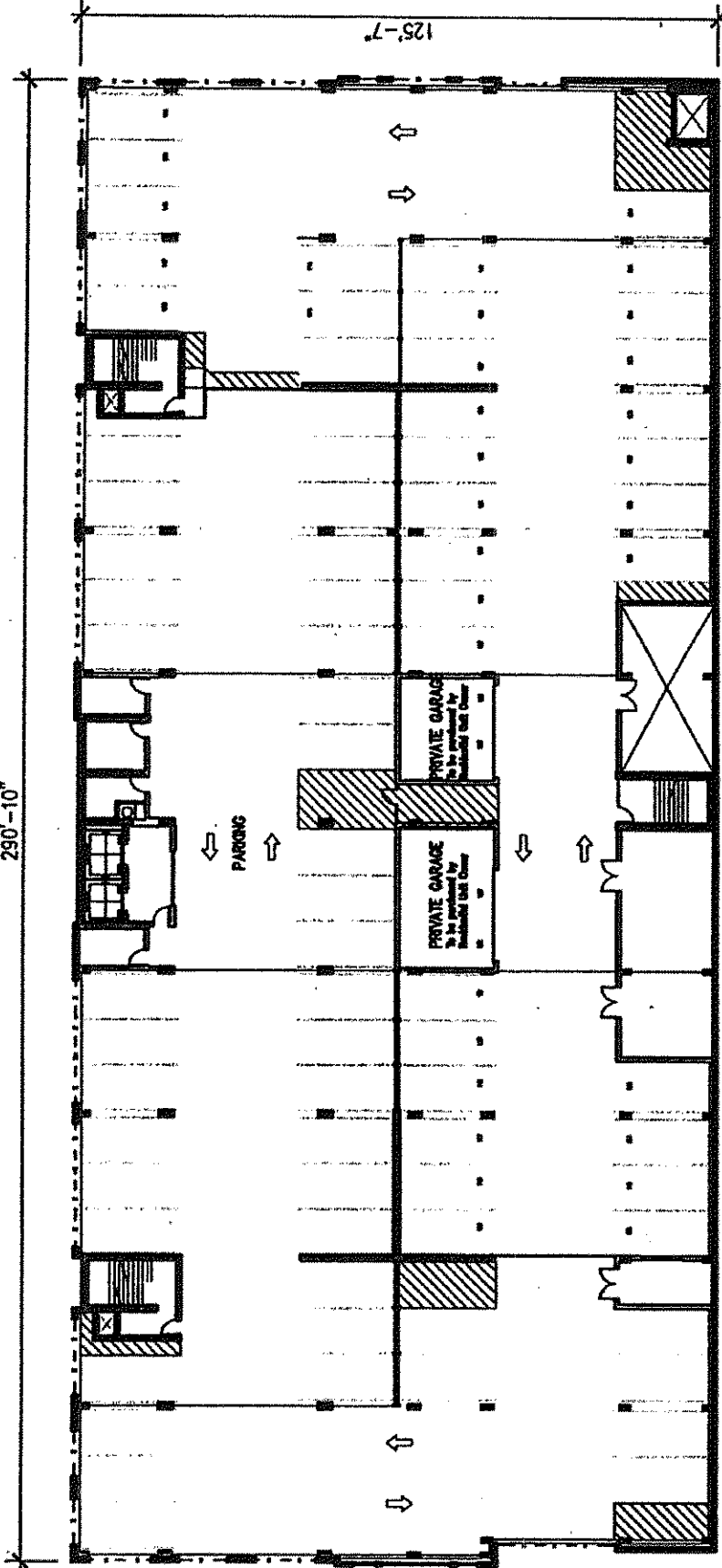
0' 32' 64'

4TH FLOOR PLAN

EMERALD CONDOMINIUMS GALVESTON, TEXAS

290'-10"

125'-7"

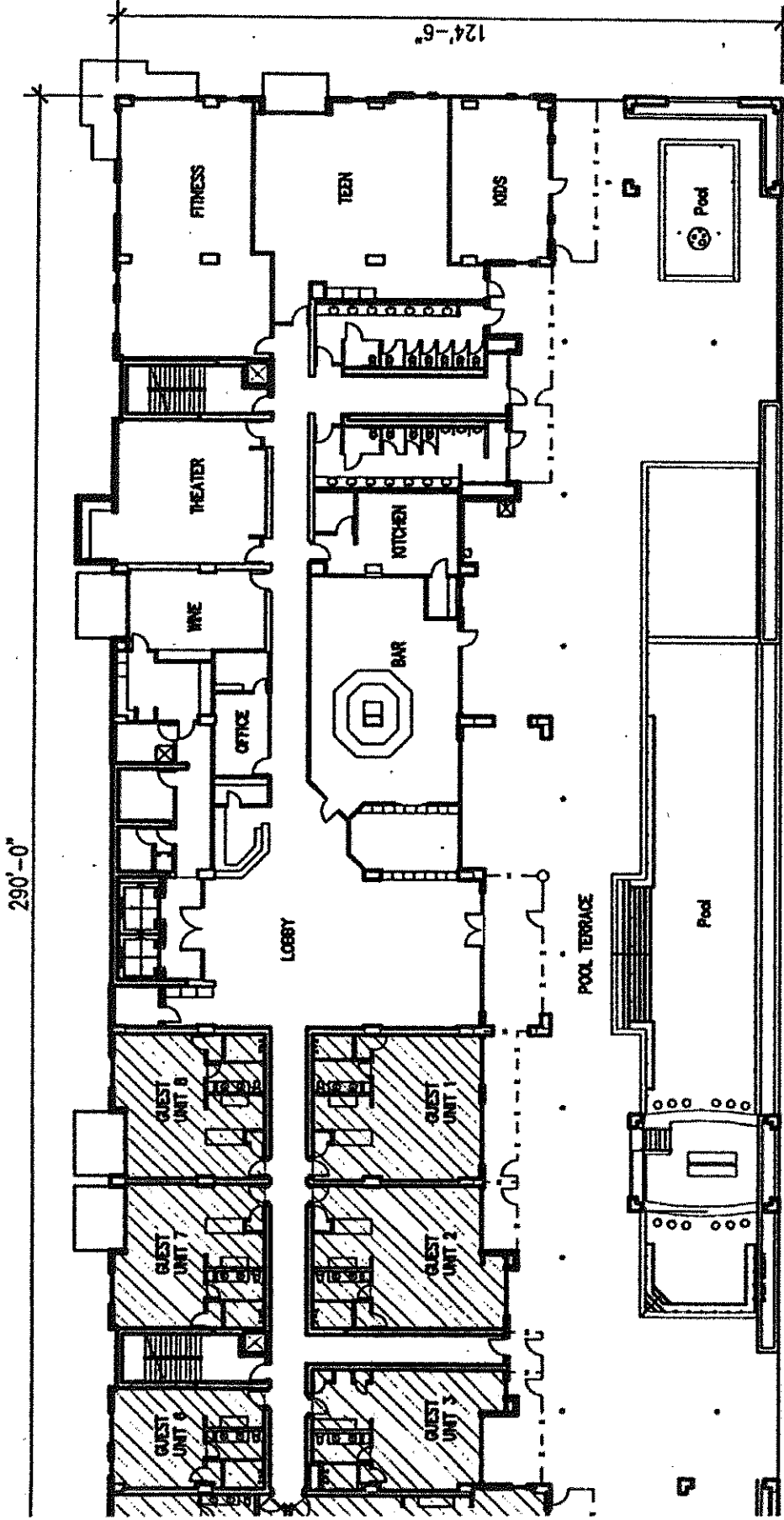


Everything that is not a UNIT is COMMON AREA.
 Drawn to scale.

0' 32' 64'

5TH FLOOR PLAN

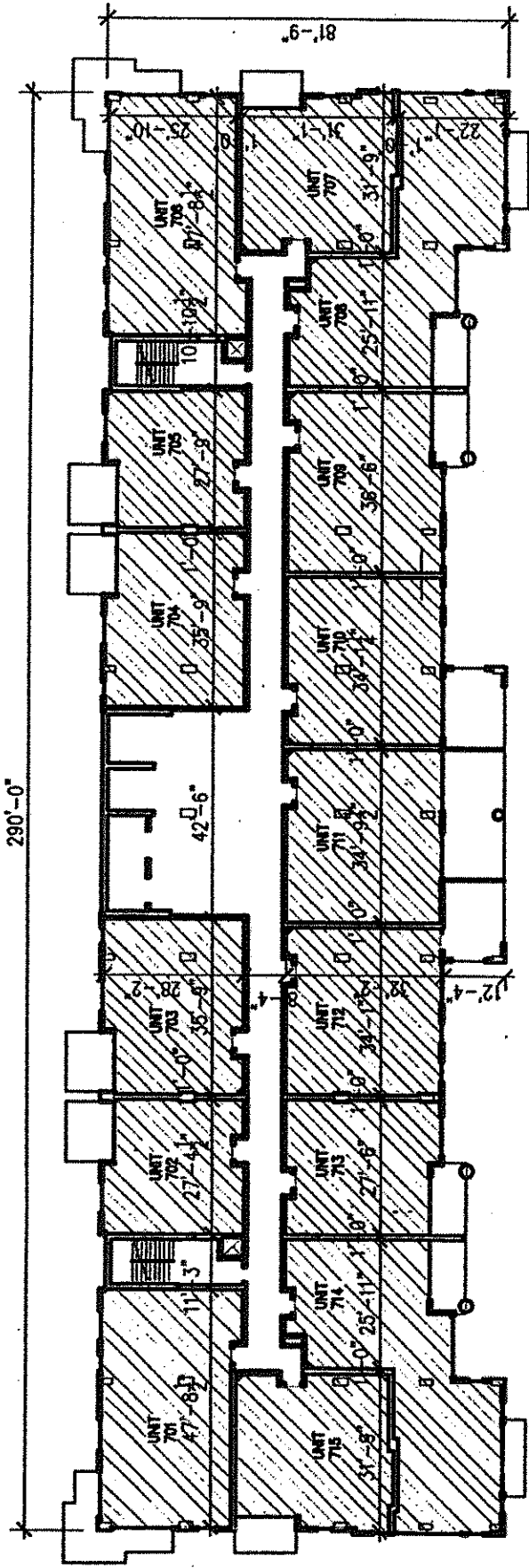
EMERALD CONDOMINIUMS GALVESTON, TEXAS



- GUEST SUITE 1: 1116 SF (933+182)
- GUEST SUITE 2: 1098 SF (1014+84)
- GUEST SUITE 3: 944 SF (804+140)
- GUEST SUITE 4: 1757 SF (1453+303)
- GUEST SUITE 5: 1141 SF (947+194)
- GUEST SUITE 6: 579 SF (579+0)
- GUEST SUITE 7: 922 SF (810+112)
- GUEST SUITE 8: 922 SF (810+112)

Everything that is not a UNIT is COMMON AREA.
 Drawn to scale.

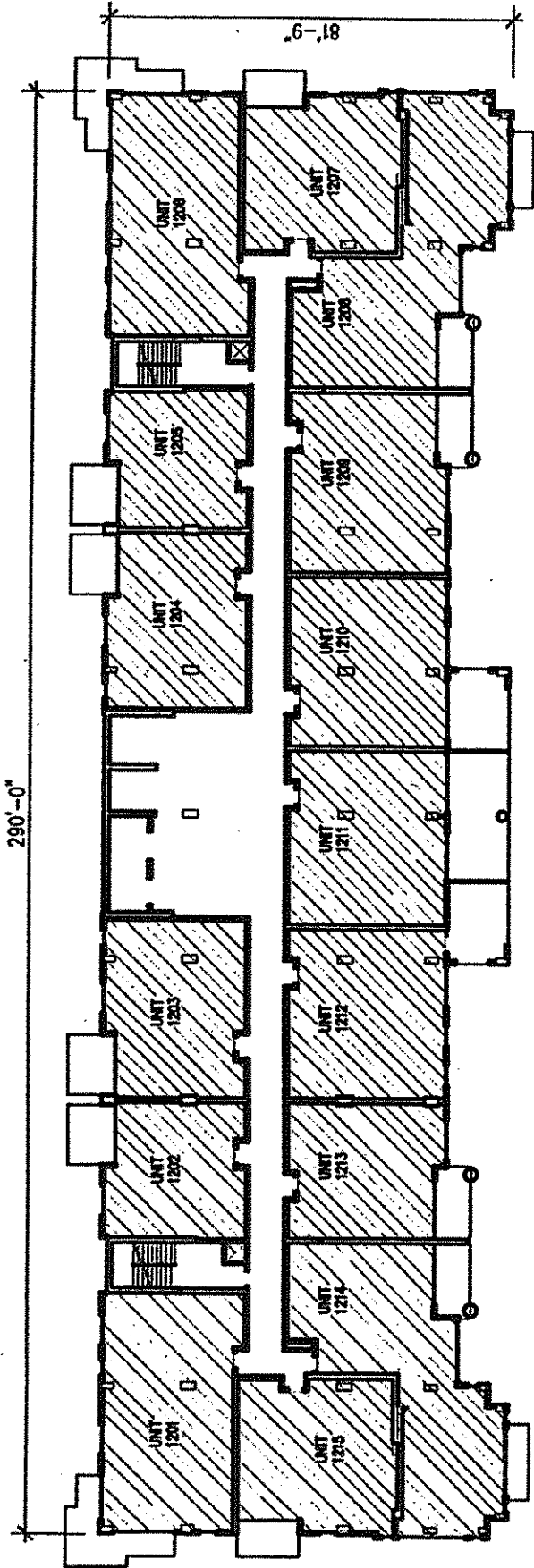
6TH FLOOR PLAN



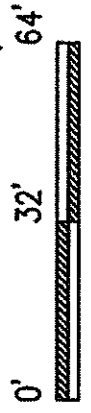
7TH-11TH FLOOR PLAN

EMERALD CONDOMINIUMS GALVESTON, TEXAS





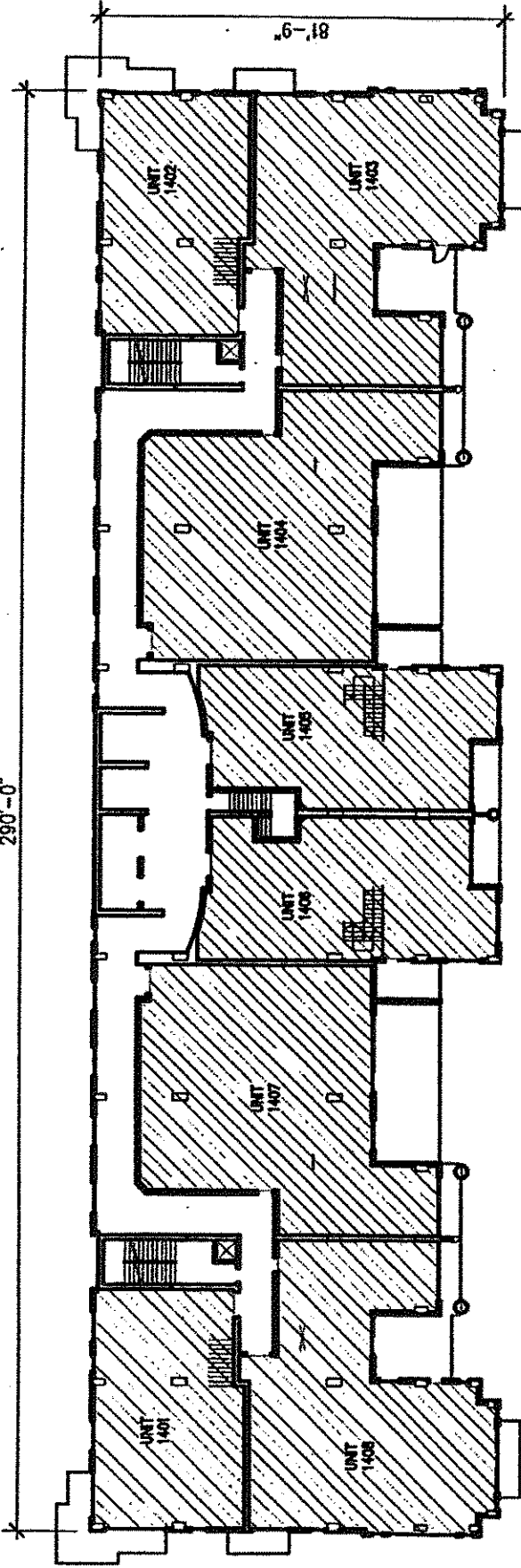
Everything that is not a UNIT is COMMON AREA.
 Drawn to scale.



12TH-13TH FLOOR PLAN

EMERALD CONDOMINIUMS GALVESTON, TEXAS

290'-0"



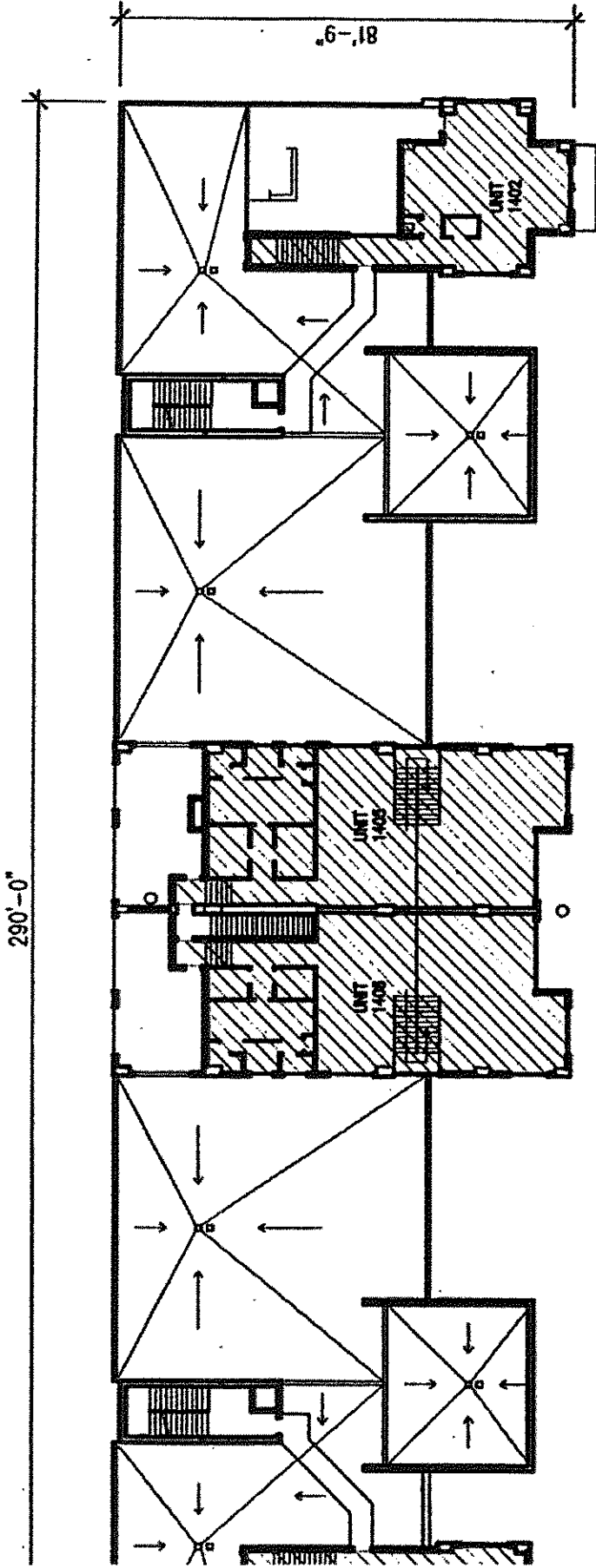
Everything that is not a UNIT is COMMON AREA.
Drawn to scale.

0' 32' 64'



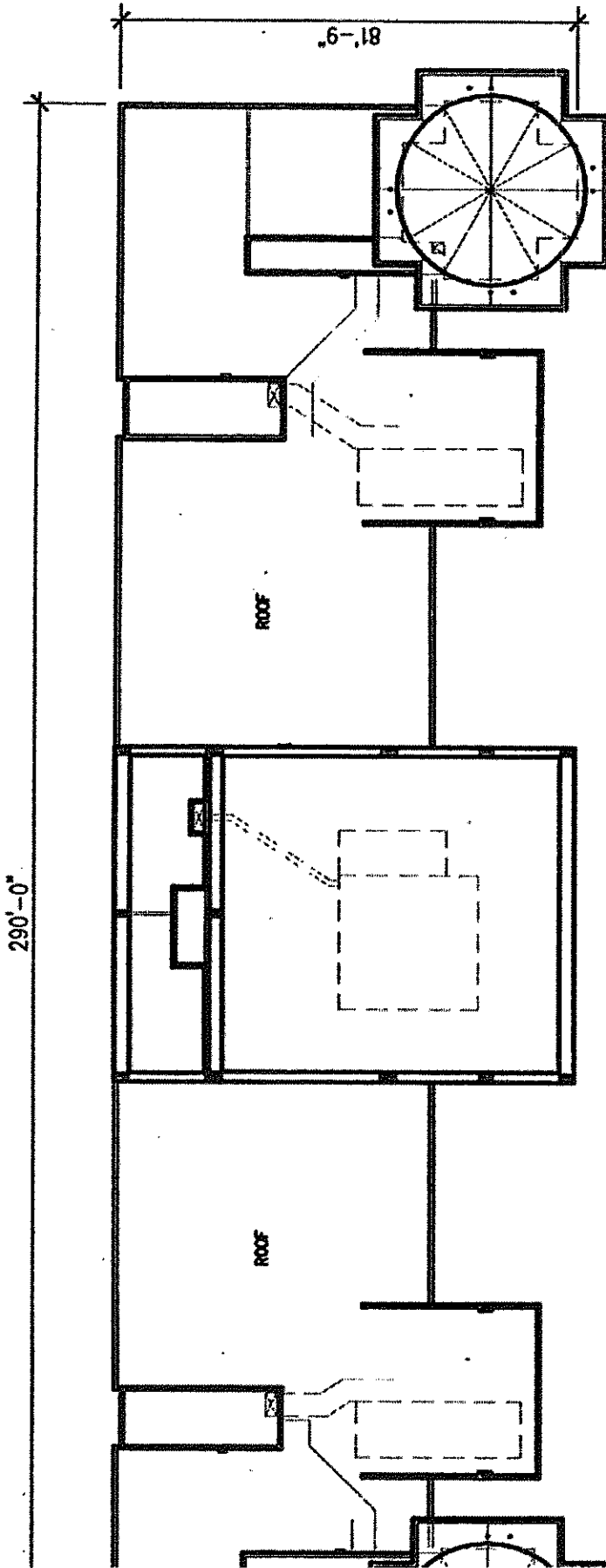
14TH FLOOR PLAN

EMERALD CONDOMINIUMS GALVESTON, TEXAS



Everything that is not a UNIT is COMMON AREA.
 Drawn to scale.

15TH FLOOR PLAN



Everything that is not a UNIT is COMMON AREA.
 Drawn to scale.

ROOF PLAN

Exhibit D
Easements and Licenses

PARKING AND ACCESS EASEMENT

THE STATE OF TEXAS §

COUNTY OF GALVESTON §

Whereas, 500 SEAWALL, LTD., a Texas Limited Partnership, (herein called "500 Seawall") is the Owner of a tract of land described as follows, to wit:

All that property described in Exhibit A, attached hereto and referred to here and for all purposes ("500 Seawall Property").

Whereas, Emerald Tower, Ltd., a Texas Partnership (herein called "Emerald Tower" is the Owner of a tract of land described as follows to wit:

All of that property described in Exhibit B, attached hereto and referred to herein and for all purposes (herein called the "Emerald Tower Property").

Whereas, Emerald Tower is developing the Emerald Tower Property by constructing parking garage (the "Parking Garage") and condominium units, together with other improvements on the Emerald Tower Property; and

Whereas, Emerald Tower has agreed to grant to 500 Seawall access to the Parking Garage and parking easements upon the terms and conditions contained herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable considerations, and in consideration of the mutual covenants contained herein, 500 Seawall and Emerald Tower have agreed and do hereby agree as follows, to wit:

1. The Parking Garage shall mean and refer to a 5 story parking garage located on the Emerald Tower Property to be constructed by Emerald Tower.
2. The Easements granted herein to 500 Seawall shall be for the benefit of 500 Seawall, and their successors, assigns, guests, tenants, customers and invitees.
3. Emerald Tower hereby grants to 500 Seawall the perpetual right and easement

4. 500 Seawall has contributed to Emerald Tower, Ltd., certain sums to provide for the construction of a portion of the Parking Garage, and, by this agreement agrees to pay 50% of the costs of the maintenance and operation of the Parking Garage, (the "Maintenance Expense") including repairing, cleaning, providing adequate lighting and otherwise keeping and maintaining the Parking Garage including landscaping, access driveways and walkways in a clean and serviceable condition, and also including the costs of maintaining hazard insurance, and general public liability insurance, ad valorem taxes, if any, or of a sinking fund to provide for future major expenses which may be incurred by cost of property damage in excess of insurance, and a reasonable fee for management of such facility. It is understood that such expense amounts shall not include any amounts expended which are solely for the benefit of the owners of Condominium Units on the Emerald Tower Property such as security gate or any maintenance of such improvements. Maintenance Expense shall become due and payable from and after the date of completion of the Parking Garage expenses accruing after such date of completion
5. Both parties agree that the Emerald By the Sea Homeowner's Association (the "Association") shall manage the Parking Garage on the Emerald Tower Property. All billings for maintenance and upkeep of the Parking Garage shall be billed on a monthly, bi-monthly or quarterly basis, based on estimated expenses, at the discretion of the manager of the Parking Garage. At the end of each calendar year, the Manager of the Parking Garage shall furnish to 500 Seawall or its assigns a written statement of the total costs and expenses of operation and maintenance of the Parking Garage for the preceding calendar year, and will make such adjustments as may be necessary based on actual expenses and amount of expenses actually paid by 500 Seawall. 500 Seawall shall owe any shortage to the Association within 30 days after the receipt of such statement. In the event Maintenance Expense shall have been overpaid by 500 Seawall, the amount of overpayment shall be deducted from the next payments of Maintenance Expense due by 500 Seawall.
6. It is expressly understood that the covenants contained herein for payment of Maintenance Expense shall be binding upon 500 Seawall and any owner of a portion of the 500 Seawall Property whether or not title to the 500 Seawall Property or any portion thereof, is acquired by foreclosure, trustee's sale or otherwise. It is expressly understood and agreed that the failure to pay any assessment by 500 Seawall or their respective successors or assigns shall not entitle any party

- Seawall Property to secure the payment of the Maintenance Expense due by Seawall. A statement of lien may be filed for record against the defaulting owner in the office of the County Clerk of Galveston County, Texas, signed verified, which shall contain at least the following, to wit:
- a. Statement of the unpaid amount of costs and expenses.
 - b. Sufficient description for identification of that portion of the 500 Seawall Property which is subject to the lien; and
 - c. The name of the owner or reputed owner of the Property which is subject of the alleged lien.
9. Any such liens shall be expressly subordinated to the lien of any bona fide deed of trust or mortgage or other security device given by any Owner of all or a portion of the 500 Seawall Property for the purposes of acquisition or improvement of all or a portion of the 500 Seawall Property (or a refinancing thereof). Provided, however any such subordination shall apply only to the Maintenance Expense which has become due and payable prior to a sale or transfer of such property by foreclosure or deed in lieu of foreclosure by the holder of such security interest. Such sale or transfer shall not relieve any subsequent owner for liability for any Maintenance Expense or Use Fee thereafter becoming due or the liens herein granted to secure the same.
10. 500 Seawall shall have the right, at any reasonable time, but not more often than twice a year, to examine the books and records of the Association with respect to expenses incurred and billed pursuant to this agreement.
11. In the event 500 Seawall should dispute the proration of expenses or the assessment of expenses as Maintenance Expense under the terms hereof, such dispute may, at the option of 500 Seawall, be submitted to arbitration for determination of the proper manner of calculation of the Maintenance Expense to be assessed under the terms hereof. The expenses of arbitration shall be assessed as may be determined by the arbitrator, based on who is the successful party.
12. In the event Emerald Tower should fail to provide insurance or make repairs required in order to maintain the easements herein granted or any access thereto from the 500 Seawall Property, 500 Seawall shall furnish notice to Emerald Tower to remedy such condition and shall allow Emerald Tower a reasonable time within which to remedy such condition. It is hereby stipulated that 30

13. The term "date of completion" of the Parking Garage, as contained in this Agreement shall mean and refer to a date 30 days following the date that the Certificate of Occupancy shall be issued for the use of the Parking Garage at 500 Seawall has been notified by personal delivery or Certified Mail, Return Receipt Requested that the Parking Garage is available for the parking of car or the date that such Parking Garage is used by 500 Seawall for parking, whichever date is earlier.
14. Emerald Tower and/or the Association shall have the right, from time to time to make reasonable regulations regarding use of parking spaces in the Parking Garage, including reservation of spaces for the exclusive use of Owners and Tenants of the Emerald By The Sea Condominium, handicapped parking spaces and other reasonable restrictions and reservations of parking spaces except that at least 58% of the Parking Spaces in the Parking Garage shall be available for the non-exclusive use by 500 Seawall or its customers, tenants, guests or invitees. Provided, 500 Seawall shall have the right to designate up to 50 Parking spaces of its allocated parking Spaces for the exclusive use of 500 Seawall or its assigns.
15. Emerald Tower and 500 Seawall agree that no Parking Spaces allocated for the use of 500 Seawall shall be used for parking of vehicles for longer than forty eight hours at one time, and that either Emerald By The Sea or 500 Seawall shall have full power and authority to enforce such regulation provided that proper notices must be given to enforce such regulation as provided under the laws of the State of Texas.
16. Emerald Tower reserves the right to the non exclusive use of the Parking Spaces allocated to 500 Seawall herein, for the use of Condominium Owners, visitors, tenants, guests and invitees except for the exclusive Parking Spaces which may be designated by 500 Seawall from time to time.
17. Emerald Tower covenants and agrees that it will not block vehicular or pedestrian access to the Parking Garage from the 500 Seawall Property except for temporary repairs and for other unusual situations which prevent access temporarily.
18. Any insurance policies to be secured by Emerald Tower in connection with the Parking Garage shall name 500 Seawall as a named insured, including policies

except on a temporary basis.

20. Any notices provided herein shall be given by personal delivery or by CERTIFIED MAIL, RETURN RECEIPT REQUESTED to the parties heret the following address or at such other address as may be furnished, from tim time upon three (3) day notice in writing, to wit:
- Emerald Tower, Ltd.
1601 W. Webster #9
Houston, TX 77019
- 500 Seawall, Ltd.
1601 W. Webster, #9
Houston, TX 77019
21. The terms and provisions herein shall be binding upon the parties hereto, the heirs, successors and assigns, and upon any subsequent owner of Emerald Tower Property, and the 500 Seawall Property and shall be considered covenants running with the land.
22. The easements granted herein shall be considered perpetual and cannot be terminated except as herein provided and as follows:
- a. Upon the agreement of the Association and the Owners of the 500 Seawall Property.
 - b. Upon complete destruction of the Parking Garage so that it may not be used for parking and the Parking Garage is not rebuilt within three (3) years after such destruction.
 - c. Upon the termination of the use of the 500 Seawall Property as a retail shopping center.
23. Upon termination of the parking rights due to act of God or otherwise for more than thirty (30) days, all fees due as provided herein shall be abated until such parking rights shall be restored and, upon termination of the easement herein granted, all fees due as provided herein shall terminate.

EMERALD TOWER, LTD.
By: Sunhill International, Inc.
its general partner

By: *[Signature]*
Namir Faidi, President

500 SEAWALL, LTD.
By: Sunhill International, Inc. its General
Partner

by: *[Signature]*
Namir Faidi, President

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 11th day of February, 2007
Namir Faidi, President of Sunhill International Corporation, a Texas corporation, General
Partner of 500 Seawall, Ltd. in the capacity therein stated.

Notary Public, State of Texas

FILED AND RECORDED



OFFICIAL PUBLIC RECORDS

Mary Ann Daigle

2007045537

July 12, 2007 12:59:34

FEE: \$296.00

Mary Ann Daigle, County Clerk
Galveston County, TEXAS